Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Maritime Communications/Land Mobile LLC	)	File No. 0004430505
and Enbridge Energy Company, Inc.	)	Call Sign: WQGF316
Assignment of Authorization Application	)	
	)	

To: Office of the Secretary

Attn: Wireless Telecommunications Bureau

Petition to Deny,
or in the Alternative Section 1.41 Request[1]

Warren Havens ("Havens"), Environmentel LLC ("ENL"), Verde Systems LLC ("VSL"), Intelligent Transportation & Monitoring Wireless LLC ("ITL"), Telesaurus Holdings GB LLC ("THL"), V2G LLC ("V2G") and Skybridge Spectrum Foundation ("Skybridge") (together "Petitioners") hereby petition to deny (the "Petition") the above-captioned application (the "Application") disaggregating and partitioning part of the above-captioned license (the "License") from Maritime Communications/Land Mobile LLC ("MCLM") to Enbridge Energy Company, Inc. ("Enbridge" or "Assignee").

Based on demonstrated and compelling facts and relevant law, Petitioners request (i) that the Application be dismissed or denied due to inherent defects as well as defects in the License and disqualification of the licensee MCLM, (ii) that the License be revoked or canceled and appropriate sanctions taken against MCLM including disqualification as Commission licensee for lack of character and fitness, for repeated willful misrepresentations and rule violations including, but not limited to, its actual control and ownership, its actual officers and directors, its des-

[1] A copy of this petition to deny will be filed under File No. 0002303355 and in WT Docket 10-83 since it contains relevant new facts and arguments of decisional significance to those proceedings. Petitioners also intend to supplement with a copy of this petition the other pending proceedings involving Petitioners' challenges to the MCLM AMTS incumbent and geographic licenses.

ignated entity size (it has never qualified as a DE entity), undertaking unlawful transfers of control and assignment (including for License with respect to Mr. DePriest never being disclosed), unlawful operation of AMTS licenses as PMRS (which means they have permanently discontinued AMTS service), and for maintaining stations that automatically terminated without specific Commission action for failure to meet the requirements of Section 80.475(a).

If for any reason the FCC does not process this Petition under Section 1.939, then Petitioners request that it be processed under Section 1.41, including for consideration of the facts and arguments herein for a more full and complete record and determination in the public interest, especially since they deal with the fundamental, required ownership and control disclosures, application certification statements and other fundamental FCC rules, and because it will be more efficient for FCC processes and the parties involved to address the facts and arguments raised herein now.

The Petition shows there is at minimum a dispute as to the control in MCLM (although Petitioners believe that the facts clearly show Donald DePriest is a controlling interest and MCLM intentionally hid him in order to qualify for a bidding credit it did not qualify for) and as such the Application cannot be granted. Also, if MCLM is found to be a sham corporation (see facts and arguments on this below), and thus not in control the License, then at minimum MCLM cannot take any licensing action until the FCC determines, based on clearly conflicting language, who does control MCLM and have authority to execute licensing applications. Further, as argued below, John Reardon signed the Application and thus it is defective since he gave a false certification per the facts contained herein (Mr. Reardon and Sandra DePriest and MCLM assert that he is merely an authorized employee and thus not an officer; however, the facts and arguments herein show those to be misrepresentations) and per MCLM's own arguments he is not authorized as an officer and thus cannot bind MCLM to the Application. In any case, the issue of Mr. Reardon's authority and role in MCLM must first be resolved prior to any action on the

Application since it is Mr. Reardon who is making the certifications on the Application.

Reference and Incorporation of Other Petitions to Deny previously filed: Petitioners previously filed other petitions to deny regarding another MCLM AMTS license assignment—see *Petition to Deny, or in the Alternative Section 1.41 Request* filed July 28, 2010 by Petitioners regarding File No. 0004315013, Call sign KAE889 (the "KAE889 Petition") and *Petition to Deny, or in the Alternative Section 1.41 Request* filed September 1, 2010 by Petitioners regarding File No. 0004310060, Call sign WQGF316 (the "Jackson Petition"). Those items in the KAE889 Petition and Jackson Petition not specific to the MCLM assignment subject of the KAE889 Petition or Jackson Petition and not set forth in the text below are fully referenced and incorporated herein.

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	Mississippi and Tennessee cases that involve as defendant Donald DePriest, with notes and highlights (these are essentially the same as were filed with Petitioners Petition for Reconsideration based on New Facts against the MCLM Form 601 from Auction 61. Exhibits 1, 2, 4, 5, 6, 7, 9-11: These are essentially the same as were filed with Petitioners Supplement to Petition for Reconsideration on New Facts regarding the MCLM Form 601 from Auction 61. Exhibit 12: Various documents showing that John Reardon is the President and CEO of MCLM, contrary to the assertions that he is just an employee made by Sandra DePriest, who alleges to be the sole owner and controller of MCLM. Exhibit 13: An discussion of use of the term "officers" and the like in corporate law. Attachments 001-013: Various documents, records, etc., including from court cases, that show, among numerous other items, MCLM has misrepresented to the FCC its control, officers, affiliates, gross revenues, etc. Mobex is an affiliate, John Reardon is an officer, Donald and Sandra DePriest don't live separate economic lives and thus knew they had to attribute Mr. DePriest, MCT Corp. is an affiliate and made scores of millions, undisclosed ownership interests in MCLM, FCC licenses impermissibly pledged as collateral, numerous court cases and judgments against Mr. DePriest, Spectrum Bridge statements that Mobex and Watercom incumbent stations ceased operation and are dormant and MCLM used those to block competition at Auction No. 61, etc. Other Attachments and Exhibits. As described in the text.	

(i) Introduction and Summary

In addition to the below summary, the table of contents itself summarizes well the content of this Petition.

Petitioners show herein that they have standing and interest to file the Petition and that the Petition contains many *prima facie* facts that show the Application must be dismissed or denied and the License canceled or revoked. The facts presented show the following regarding MCLM, most of which are cause for termination of the subject AMTS license, dismissal of the Application, and disqualification of MCLM as a Commission licensee: (1) By the actions, assertions and admissions of its owners, MCLM does not exist as a valid legal entity under corporate law; (2) that MCLM has unlawfully pledged all of its AMTS licenses as collateral and therefore has affected an unlawful transfer of control; (3) that MCLM has failed to disclose since its start its actual control and ownership and that Donald DePriest is an owner and controller of MCLM and that this represents another unlawful transfer of control (thus making the Application defective); (4) that the Application has several incorrect and false certifications making it defective; (5) that MCLM failed to disclose numerous other controlling parties, including officers; (6) that Mobex and MCLM have unlawfully operated their AMTS stations as PMRS, which means their AMTS licenses were not providing CMRS AMTS service (AMTS is CMRS by nature), and thus have permanently discontinued, much like the Chicago station, for failure to operate as authorized (PMRS service was not permitted by Mobex's and MCLM's AMTS licenses and operation as such failed to meet the rule requirements for keeping and operating a CMRS AMTS license); (7) MCLM has failed to pay regulatory and other fees associated with their license operations to be reported on Form 499-A since they have illegally operated their AMTS licenses as PMRS; (8) that MCLM has made repeated and willful misrepresentations, contradictory statements of fact and lacked candor before the FCC; and (9) that MCLM (along with Mobex) maintained and renewed a licensed incumbent stations that had ceased to operate or automatically terminated for

failure to meet to coverage requirements of Sections 80.475(a), yet they never turned the station licenses back in for cancellation, but instead kept using it to block out competition at auction (See e.g. Attachment 010 hereto). Other new facts are that both the Wireless Telecommunications Bureau ("WTB") and Enforcement Bureau ("EB") have commenced investigations of MCLM and its affiliates based on the new and old facts presented by Petitioners and those investigations are ongoing and MCLM and its affiliates have provided additional information and responses in those investigations showing rule violations, misrepresentations and lack of candor. The Petition references and incorporates several pending proceedings that contain facts and arguments relevant to the Application rather than reiterate them entirely herein for efficiency and convenience of the parties involved.

In addition, in this Petition, Petitioners provide facts, including ones obtained via FOIA requests, to show that the FCC has treated Petitioners with prejudice with respect to MCLM and its applications and licenses and violated its constitutional petition rights, including by carving it out of proceedings.

The totality of the facts presented requires that MCLM must be found to lack the required character and fitness to be a Commission licensee and it must be disqualified for repeated and willful misrepresentations, rule violations, lack of candor, and fraud. Its License must be revoked or terminated and the Application dismissed or denied. At minimum, the facts herein are sufficient *prima facie* evidence requiring a hearing under Section 309 since they clearly call into question whether or not grant of the Application is in the public interest, and many are already the subject of the two ongoing FCC investigations of MCLM.

(ii) Character Examination, and Section 308 Investigation:

> The Commission acknowledges… that in the Uniform Policy the Commission itself concluded that Section 308(b) both gave it "the authority and imposed upon it the duty" to examine basic character qualifications "in evaluating applicants for radio facilities." * * * *
> We do, however, agree with NRBA and Citizens that some behavior may be so fun-

damental to a licensee's operation that it is relevant to its qualifications to hold any station license. [Underlining added.] [2]

For reasons shown herein, the Commission should do the above and has a duty to do so, after it completes thorough discovery and investigation of relevant facts, which it has not yet done. There are numerous non-FCC government sources identified by Petitioners as holding relevant facts and other parties from whom the FCC should subpoena this information (see e.g. the "3 Motions Email" defined below). Petitioners show herein that MCLM lacks the required character and fitness to be a Commission licensee and that it should be disqualified as a Commission licensee. This is supported by Commission precedent and policy, see Attachment 1 to the "Pinnacle Recon", as defined herein below, that contains the Commission's own rulings on disqualification of a licensee and revocation of licenses per its *Character Policy Statement*.

(iii) Standing and Interest

Petitioners show here that they have standing and interest to file the Petition and that they will be harmed by grant of the Application, including because one of Petitioners has *Ashbacker* rights to the License, and that grant of the Application is not in the public interest. ENL and ITL had the only legitimate and lawful high bids in Auction No. 61 for the Mississippi River A-Block geographic license represented by the License and thus have interest and standing to defend their rights to the subject spectrum, one of which, depending on the conclusion of the Auction No. 61 Proceedings noted below, should be the eventual licensee of the License. Thus, ITL and ENL would be harmed, as discussed below, by grant of the Application. VSL, ITL, ENL and SSF are direct competitors of MCLM per their AMTS license area holdings as evidenced by ULS. In fact, VSL is a direct competitor with MCLM in the Mississippi River license area, including in

[2] *In the Matter of Policy Regarding Character Qualifications....and Procedure Relating to Written Responses to Commission Inquiries and the Making of Misrepresentations to the Commission by Permittees and Licensees*. *Report, Order, and Policy Statement*, FCC 85 648. Released: January 14, 1986. This is included as Attachment (i) to the "Supplement to New Recon" described below.

the subject area of the Application, since it holds the Mississippi River B-block license spectrum (Call Sign WQCP815). In addition, all of the aforementioned of Petitioners are direct competitors with MCLM in AMTS in other regions of the country where MCLM currently holds the other geographic license block or site-based incumbents. THL and SSF hold LMS licenses that may offer competitive services to those that MCLM can provide with the License.[3] ITL holds MAS licenses and V2G, ITL and SSF hold Paging licenses as evidenced by ULS that can offer services competitive to the License. MCLM has argued itself that this is sufficient for standing in a petition to deny it filed of certain Section 20.9(b) certifications of certain of Petitioners (see e.g. File No. 0003875427) and in MCLM's recent 11/6/09 petition to deny certain 220-222 MHz renewal applications and extension requests of certain of Petitioners (see e.g. File No. 0003223081).

Petitioners also have standing based on the criteria applied in US courts under Article II of the Constitution, **see** *Lujan v. Defenders of Wildlife*, 112 S. Ct. 2130, 2136 (1992) ("*Lujan*"),[4] not an artificially narrow standard that MCLM has suggested in the past that the FCC should apply (even if some FCC decisions may be interpreted to provide for such a narrow standard). Article III standing is obtained among other ways, where—as in the instant petition proceeding—unfair competition antitrust law violation claims are asserted (and until disproven or dismissed), even where the existence of an matter or action that offends or arguably offends said law is the sole basis for standing, and where the challenger asserting standing is among the parties entitled to protection under said law (where, without said protection, injury in fact to the party asserting standing, and to

[3] See THL's and SSF's LMS Call Signs for the Mississippi River region in ULS records, including covering northern Louisiana. LMS rules permit THL and SSF to provide competitive services to those of AMTS. The FCC is familiar with its own rules, so Petitioners do not reiterate those rules here to show that the services can compete.

[4] Federal administrative proceeding standing criteria, as summarized in the APA, is derived from Article III standing. Regarding *Lujan*, a well known case on Article III standing, Justice Scalia, who wrote for the majority in *Lujan*, later asserted that even a plane ticket to the affected geographic areas would have been enough to satisfy the future injury requirement. *City of Los Angeles v. Lyons*, 461 U.S. 95 (1982).

the markets involved, is assumed, as it is under said antitrust law).[5] It is clear that, to the degree (as asserted here) the assignor and assignee and the Application do not comply with the rules, that Petitioners suffer competitive harm, and also that subject wireless markets are harmed:[6] noncompliance with rules that are the basis of fair competition is obviously particularly harmful—this is the case with MCLM.

This petition should also be considered for a more full and complete record in the public interest and because it will be more efficient for FCC processes and the parties involved to address the facts and arguments raised herein now rather than have to later rescind the grant of the Application and any benefit received under it by MCLM due to decision in favor of Petitioners' pending proceedings before the FCC that involve the License and MCLM or in the Section 308 Proceeding, Section 309 Proceeding or Enforcement Proceeding (as described below). In addition, with respect to the facts presented here, it was MCLM who had an obligation under Sections 1.17, 1.65, 1.2105, 1.2110, and other rules to provide them to the FCC, not Petitioners, thus it is appropriate that the FCC accept this petition to consider these facts. In addition, even if the FCC were to find that Petitioners lack standing, this petition should be processed under Section 1.41, including for consideration of the facts and arguments herein for a more full and complete record and determination in the public interest, especially since they deal with the fundamental, required ownership and control disclosures, and other fundamental FCC auction rules, and because it will be more efficient for FCC processes and the parties involved for the reasons just stated above. Given the extent of misrepresentations, rule violations and other lack of candor, character and fitness evidenced by the facts presented herein, it is clearly in the public interest to consider the Petition and not grant the Application.

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[5] See, e.g., *Ross v. Bank of Am., N.A.*, No. 06-4755, 2008 WL 1836640 (2d Cir. Apr. 25, 2008).

[6] SSF as a nonprofit Foundation legally must and does solely serve public-interests and no private interests. It has standing on that basis: to pursue protection for the wireless markets involved.

Petitioners also have interest and standing due to reasons given in Sections 1a, 1b, and 1c hereto. The FCC, by unlawfully denying and subverting essential petition rights and protections, and proceeding with licensing actions for the spectrum subject of that denial, creates special interest and standing in this matter. That includes not only Petitioners' private rights and damages involved, but their right to defend the Communications Act and public interest involved, as they in fact are doing in this Petition and their pending petitions on MCLM spectrum and matters.

In addition to the above, while the above clearly establishes standing, the following applies.

Principally by Petitioners petitions to deny and for reconsideration challenging the MCLM long form in Auction 61 and their filings in the related FCC Enforcement Bureau investigation of MCLM and its affiliates, there exists extensive compelling evidence before the FCC records of MCLM anti-competitive licensing fraud and actions in AMTS. This involves direct, damaging, anticompetitive action by MCLM and affiliates against Petitioners. The FCC should consider in licensing actions such anticompetitive licensee conduct, and the interest and standing of the party injured, as indicated by Congress in promulgating Section 313 of the Communications Act. In that regard, while the FCC is not an authority to process and decide on allegations of violation of US antitrust law under said Section 313, it does consider said actions when they are directly by an FCC licensee in a license operation or other license-based actions. That is shown in Section of the Communications Act and in various FCC rules including Section 1.2109(d): regarding that rule, in addition to its reflection of the FCC consideration of anti-competitive actions in auctions, it also reflects the broader FCC policy and practice of considering anti-competitive action in licensing matters. The point here, again, is that anti-competitive action is a basis of damage that gives rise to standing. This is a case where that is abundantly clear.

Further, it is well- known and –established FCC policy to allow and promote competition in the marketplace and remove regulatory barriers and for this purpose to allow in each radio

service applications or services that may compete with those of other radio services (at least to the extent permitted under technical rules providing for radio interference protection). All of Petitioners other (non-AMTS) licenses (adjacent 220 MHz, M-LMS, Part 22 paging in 35, 43, and 900 MHz, and MAS) clearly may compete with the MCLM AMTS licenses in this regard, and the FCC properly seeks cross-service competition. It is clear technically that it is not the frequency range that determines the services that may be the same or similar for effective competition, but it is other things such as the data rates, coverage, permitted uses, etc. Indeed, the industry is moving gradually but surely to software-defined radio and other technology to allow one radio unit to use many bands, and many protocols, such that the service provide is agnostic to the frequency band employed at a particular time and place. In short, to deny standing based on this technical progress and this good policy of competition among radio services would undercut the public interest in both.

Petitioners were the main purchasers (in total spent and number of licenses bought) in FCC Auction 87, recently concluded. This enhances their ability and plans to compete nationwide in wireless focused on smart transport, energy, environmental protection, and emergency situations. They are pursing this in large part on nonprofit basis, which is unique in the nation on this scale. See, e.g., various documents at: www.scribd.com/warren_havens/shelf . This further demonstrates standing in that it further demonstrates Petitioners ongoing major actions and expenditures to be competitive in the market, which includes all services that may be provided by the AMTS licenses held by MCLM.

That points to unique additional standing also: which is that Petitioner Skybridge Spectrum Foundation, a nonprofit corporation recognized by the IRS as a tax exempt scientific, educational and charitable organization, has as part of its core nonprofit purposes, to oppose cheating and waste in FCC licensing and license use. That is in direct support of Congress' goals of the Communications Act, FCC goals, and stated goals of many other federal agencies. Standing

is based on injury to lawful interests of a person including a corporate person. A nonprofit has standing where its nonprofit goals are interfered with, and to pursue those goals. In this case, Skybridge has this additional standing in this case (and in other similar cases before the FCC in challenging MCLM). See: PRISCILLA SUMMERS, et al., Petitioners v. EARTH ISLAND INSTITUTE, et al., No. 07-463, SUPREME COURT OF THE UNITED STATES, 129 S. Ct. 1142; 173 L. Ed. 2d 1; 2009 U.S. LEXIS 1769; 67 ERC (BNA) 1961; 39 ELR 20047; 21 Fla. L. Weekly Fed. S 670. This case discusses Article III standing applied to nonprofit organizations in court claims they file and pursue. While in this case the court found the nonprofit that initiated the case, Earth Island Institute to lack standing to pursue the expanded case after it entered a settlement in the initial challenge, the court majority and dissent agreed as to standing of this nonprofit where it pursued its nonprofit purposes the court case when faced with and challenging specific actions by others that were contrary to its purposes: actions by others that Earth Island settled favorably. Applied to Skybridge, Skybridge has standing on the basis asserted in this section above.

Further, Petitioners have standing since all acts by MCLM to hold, use or assign AMTS licenses is an action founded on the FCC violation of its rule section 1.2015 that requires disqualification of a bidder in an auction if, after the short form deadline, it changes control or changes its Designated Entity size in any way and by any means. Petitioners have standing to challenge MCLM in this matter and the FCC has found that, in Petitioners petitions to deny and for reconsideration of the MCLM long form in Auction 61. The spectrum assignment at issue here is a further act by MCLM founded on the above-noted violations, and since Petitioners have established standing to challenge MCLM regarding said violation when it originated, they have standing to challenge this assignment action which is founded on that violation.

A. New Facts and Evidence

Petitioners provide several new facts and evidence in Attachments 001-013 hereto (the "Attachments" or "1-13 Attachments"). It was MCLM, the DePriests and their affiliates who had a duty to provide these relevant new facts in a timely fashion, but did not. Many of the 1-13 Attachments are self-explanatory; however, on certain of them Petitioners have placed notes in text boxes and used arrows and highlights to indicate or explain relevant information to the Application, License and MCLM as a licensee and its controlling interests, officers and affiliates. These notes, arrows and highlights are meant to aid the FCC, however, the FCC should conduct a full review of 1-13 Attachments and obtain any further related documents and original copies of documents for itself, as well as conduct any further investigation that is warranted. A brief description of some of the information that 1-13 Attachments contain follows:

Attachment 001 contains evidence that Mr. Reardon is the President and CEO of MCLM and that Mobex is MCLM's affiliate.

Attachment 002 contains evidence that Donald DePriest was a controlling interest in MCT Corp. during the relevant period of MCLM's Form 601 in Auction No. 61 and that MCT Corp. had scores of millions in profit. This evidence includes a business card of Donald DePriest that states he is the "Chairman" of MCT Corp. (not a non-executive chairman as he now asserts to the FCC). It also contains a private placement memorandum of MCT Corp. dated August 14, 2000 (see the memorandum starting at page 81 and going to page 154 of the pdf file, Attachment 002, as filed on ULS). Among other relevant pages of this MCT Corp. memorandum, see pages 139-147 of Attachment 002 (pages 58-66 on the memorandum) and page 150 of Attachment 002 (page 69 on the memorandum) that show Donald DePriest had the controlling interest, majority interest and senior officer position (a director in a company is an officer of the entity under law) in MCT Corp. and was part of its executive committee. It also shows that MCT Corp. had affiliates and substantial gross revenues and clearly disqualified MCLM from any bidding credit. There is also further evidence about Donald DePriest control of the BD Partnership LP that

MCLM did not disclose as an affiliate. This memorandum contradicts everything that MCLM, Donald DePriest and WPW have been publicly telling the FCC regarding MCT Corp. and Mr. DePriest's role in it, not to say what they have been privately telling the FCC (see FOIA Control No. 2010-379, in which MCLM and its affiliates confidentially filed information, including regarding MCT Corp.

Attachment 002 also contains evidence that Mr. DePriest was involved in BioVentures and that it was making money and that he had access to and copies of its financials contrary to what he informed the Enforcement Bureau in response to their letters of investigation. In fact, Mr. DePriest provides copies of BioVentures financials per this evidence, yet he tells the FCC he has no such records. Further, Attachment 002 contains court evidence that Mr. DePriest executed a warrant on behalf of MCLM and its controlling entity, Communications Investments, Inc., for ownership interests in MCLM to the "MC Group". There is also evidence regarding a treasury note from the Banco de Venezuela.

Attachment 003 contains court documents filed by MCLM that show John Reardon is the President and CEO of MCLM (by his own affidavit) and that both MCLM and John Reardon have known this. Thus, MCLM and Sandra DePriest's responses under penalty of perjury to both the WTB and the Enforcement Bureau in the Section 308 Proceeding and Section 309 Proceeding were deliberately false and misleading. At no time has Mr. Reardon come forward, as required by FCC rules, to disclose this fact either. The FCC should take action against these parties, including for violating U.S. criminal code for such false statements and behavior. Attachment 003 also contains a court filing by MCLM in which it admits that Mobex is MCLM's predecessor-in-interest contrary to its position before the FCC. Additionally, there are some public domain documents that show that John Reardon and Tim Smith have been officers of MCLM.

For example, see Exhibit A, a John Reardon affidavit, to a MCLM Motion for Summary Judgment in a court case MCLM filed in Orlando, Florida against Central Communications Net-

work and Grace Lindblom. In this affidavit by John Reardon, filed by MCLM in support of its Motion for Summary Judgment, Mr. Reardon states that he is the President and Chief Executive Officer of MCLM. That clearly contradicts what MCLM and Sandra DePriest have told the FCC. John Reardon as an ex-FCC practice attorney clearly knew that he had an obligation to inform the FCC that he is an officer of MCLM (its President and CEO) including under Sections 1.17 and 1.65. The WTB and Enforcement Bureau should send a letter of investigation to Mr. Reardon asking him to respond with all information he has on MCLM, the DePriests and to state his past and current positions in MCLM.

At page 2 of The Reverand Sandra DePriest's 9/30/09 response to the Wireless Telecommunications Bureau 8/18/09 letters under Section 308 re: File Nos. 0002303355 et al., Sandra DePriest stated, "*At all times since the formation of MC/LM, I have been the sole officer and director of MC/LM."*

At page 2 of The Reverand Sandra DePriest's 3/29/10 response to the Enforcement Bureau investigation letter, File No. EB-09-IH-1751, Sandra DePriest stated [underling added for emphasis]:

> *At all times since the formation of Maritime, I have considered myself to be the sole elected officer and director of Maritime....There was no intent to deceive as I disclosed openly in my original LOI Responses to the FCC that John Reardon was the CEO, but he is not a President, Vice-President, Secretary or Treasurer....John Reardon was never authorized to use the title "President" and he has been instructed not to do so in the future.*

Then at page 4, #5 of the 3/29/10 response she states: *" John Reardon has never been an officer of Maritime."*

The attached Exhibit A to the MCLM Motion for Summary Judgment and the MCLM Motion for Summary Judgment at Attachment 003 clearly contradict the above statements made by The Reverand Sandra DePriest and MCLM, under penalty of perjury, to the FCC.

Attachment 003 also contains a MCLM Motion for Summary Judgment: This Motion relies almost entirely upon Mr. Reardon's affidavit noted above, and states that he is MCLM's President and CEO (contrary to what they are telling the FCC), and that Mobex is MCLM's predecessor in interest (see page 8). MCLM has told the FCC that Mobex is not its predecessor in interest and thus an affiliate, yet it is telling the Court the opposite.

Also, see for example the MCLM Exhibits A-F of their Amended Complaint provided in Attachment 003. Exhibit B to the Amended Complaint contains an Amendment to the agreement between MCLM and CCN. It is signed by John Reardon. MCLM in this case states that Mr. Reardon is its President and CEO and relies almost entirely upon Mr. Reardon's sworn testimony.

Attachment 004 contains further evidence including from the FCC's own records that John Reardon is an officer of MCLM.

Attachment 005 contains evidence that Donald DePriest is the chairman of MCT Corp. (not some "non-executive" chairman as he absurdly suggests to the FCC). It also contains further evidence in various documents regarding Critical RF, Inc. that show John Reardon is an officer of MCLM, CEO and President, and that MCLM owns fully Critical RF and that Donald DePriest is involved in the business plan.

Attachment 006 is evidence from the Fred Goad v. Donald DePriest and MCLM case. It contains responses from Donald DePriest that show the following: Sandra and Donald DePriest do not live separate economic lives as they argued to the FCC as evidenced by them filing joint tax returns; that despite the suit being against MCLM too Donald DePriest asks that Sandra DePriest's financials be kept confidential and not considered; that Mr. DePriest has debts with Pinnacle Bank and Bancorp South that exceed the collateral for these debts, thus indicating that the MCLM and Pinnacle Bank UCC filing pledging MCLM's FCC licenses as collateral is correct. It appears that because Donald DePriest has tremendous debt and minimal income (his assets are

almost fully collateralized) he used his wife as a front in MCLM in order to avoid his creditors going after MCLM's assets, yet Mr. DePriest provides the majority of financing for MCLM, guarantees MCLM's debt, gives out ownership in MCLM, and signs as its Manager and Director and is also listed on documents as such.

Attachment 006 also contains a filing in the Mississippi Supreme Court by Donald DePriest (see pages 29-51 of the Attachment 006 pdf file as filed on ULS), including an affidavit by Mr. DePriest and a response by Mr. Phillips. Petitioners got in the mail late today these documents and others from an appeal that Donald DePriest filed in his and MCLM's case (and other companies of Mr. DePriest's) with Oliver Phillips. Petitioners have not had time to review these documents closely yet and highlight all relevant information. If MCLM opposes this Petition with respect to the facts and arguments that MCLM and its principals repeatedly gave false information to the FCC, and therefore lack character and fitness to hold any license, then on reply Petitioners expect to submit further relevant documents from the above-noted case on appeal and provide additional notes and arguments. However, among other relevant facts that these documents show is that Donald DePriest, apparently jointly with his wife Sandra DePriest (since they have informed courts that they have joint economic affairs and tax returns) owe over $10 million in addition to the Phillips judgment which he was appealing that was for over $9 million and accruing interest. According to this court case, Donald DePriest, MCLM and his other companies that were defendants settled this appeal with Mr. Phillips. Mr. DePriest had previously, only a month ago, in another case against him (see the Fred C. Goad case in Attachment 006) said that he has negligible income and high mortgages on a number of farm and non-farm properties. Thus, the settlement appears to have been with other assets than cash because if Mr. DePriest had over $10 million in other judgments he could not pay, plus the Phillips judgment over $9 million, and negligible income, then Mr. DePriest had to settle with Phillips based on non-cash assets. The apparent asset that he and his wife could use to settle with Phillips is MCLM and the sale

contracts, including with Enbridge, SCRRA and others. Thus, the evidence suggests that Mr. Phillips at this time may have control in MCLM, or over some of the licenses being assigned or that MCLM is trying to sell. Also, one of these court documents is a response by Mr. Phillips that states that Ms. Belinda Hudson, in her deposition testimony, said that much of Mr. DePriest's income goes "to make payments on and to pay for assets which do not belong to him." Those appear to be the assets of MCLM (Mr. DePriest and MCLM have already admitted and documents show that he is warranting and guaranteeing substantial debt of MCLM to obtain its AMTS licenses). Petitioners believe that the FCC should require all documents related to the settlement with Phillips and how Mr. DePriest is responding to all of the other creditors, given that MCLM appears to be the only substantial asset with which Donald and Sandra DePriest can settle their debts, which appear to be in excess of $20 million, with their admitted negligible income. The FCC should also clearly obtain Ms. Hudson's deposition testimony and question Ms. Belinda Hudson under oath and further investigate her since it appears she has knowledge of relevant facts regarding MCLM and the DePriests and Mr. DePriest's role in MCLM. It should also obviously obtain Mr. DePriest's and other parties deposition testimony from this case and copies of any settlement agreements between the parties.

Attachment 007 contains evidence regarding lawsuits against Mr. DePriests and judgments against him by the State of Alabama, Bank of Vernon (evidence indicates that Mr. DePriest used FCC licenses as collateral with Bank of Vernon), and Red Mountain bank among others. Some of these judgments are now confirmed by Mr. DePriest in his affidavit in the court case with Mr. Phillips contained in Attachment 006 (e.g. over $2 million to the State of Alabama).

Attachment 008 contains several UCC filings by Mr. DePriest and Maritel. The Maritel UCCs show that it pledged FCC license assets as collateral to Pinnacle National Bank and Harris Corporation and that these entities appear to have had in the past or continue to have the ability to control Maritel. As stated herein, it is not permissible to use FCC licenses as collateral. Peti-

tioners have not fully analyzed these UCC filings yet, but are providing them now to the FCC since the FCC can review them for any rule violations.

Attachment 009 contains evidence relating to Section 80.385(b) including Petitioners' requests to MCLM over the years for its AMTS station details, MCLM's response in 2010 refusing to provide such station details contrary to FCC rules, and the FCC Orders confirming that AMTS incumbent licensees must provide their actual operating station details to the neighboring geographic AMTS licensees.

Attachment 010 is a fair market valuation of MCLM's AMTS spectrum provided by Spectrum Bridge the broker and marketer of all of MCLM's AMTS licenses. Spectrum Bridge states that the AMTS incumbent licensees (it specifically identifies Mobex and Watercom) "ceased operations" and that those incumbent systems have laid "dormant" due to competition from cellular and satellite. Spectrum Bridge also states that the prices paid for the AMTS A-block geographic licenses, including the License, were lower than they should have been because MCLM bought the incumbent licenses of Mobex and Watercom, which then discouraged other bidders from competing for the geographic licenses subject of the incumbents licenses that encumbered the prime urban markets. The Spectrum Bridge statements are made in a fair market valuation report done for SCRRA (Metrolink). Thus, those statements must be assumed to be truthful since they are making them in a professional fair market valuation report to SCRRA. Appraisers must adhere to strict standards under IRS law and cannot misrepresent facts affecting the value of an asset. Spectrum bridge, as the broker and marketer of all of MCLM's AMTS licenses, has direct and intimate knowledge of the MCLM incumbent AMTS licenses, and therefore when it says the incumbent licensees, namely Mobex and Watercom, "ceased operations" and laid "dormant" those statements are an admission of fact by a third party with direct personal knowledge regarding MCLM's incumbent licenses. Thus, the Mobex and Watercom AMTS incumbent stations were permanently discontinued and they were bought and used by MCLM to block out competi-

tion at Auction No. 61. That is exactly what Petitioners have been telling the FCC for years and showing with evidence in their petitions against MCLM, including this Petition. This evidence, along with the evidence that is below regarding the incumbent licenses, warrants an investigation and audit of the MCLM incumbent licenses to determine what has been permanently discontinued and for how long.

MCLM's unlawful warehousing of the permanently discontinued AMTS incumbent licenses of Mobex and Watercom has and continues to damage and harm those of Petitioners who hold the overlying geographic license. ENL and ITL were also clearly damaged by such actions in bidding against MCLM in Auction No. 61 and they were adversely affected in their ability to raise additional funds to bid in Auction No. 61 due to the falsely maintained MCLM incumbent stations (Actually, ENL and ITL should have won all of the A-block licenses at near minimum bid as they have shown in the Section 309 Proceeding discussed herein since they were the only legitimate high bidders and should never have had to compete with MCLM because it should have been disqualified). These Spectrum Bridge statements, along with the other facts herein regarding the MCLM incumbent licenses, including in the WCB Proceeding discussed herein, are clearly sufficient evidence to merit a thorough investigation and audit of the MCLM incumbent stations. Petitioners have always stated that the FCC 2004 AMTS "audit" was not a proper audit because it merely asked the incumbent licensees to state what they built or did not and required no proof of anything. That by definition is not an audit. Instead, it should have requested documentation of construction and operation and conducted site visits. The Bureau failed to do such a proper audit even after Mobex admitted to not having built over 30 stations that it had previously reported as constructed and renewed. Therefore, it is no surprise that now evidence is coming to light to show that the other stations alleged to have been constructed and operated, at minimum, were permanently discontinued, but maintained Mobex and then MCLM to warehouse spectrum and block out competition—exactly what Petitioners have argued and shown to

the FCC all along. It is not in the public interest to grant the License or the Application of MCLM given this evidence of spectrum warehousing.

Attachment 011 contains court documents from a case that Donald DePriest filed against Mr. Peter Harmer for alleged damages of $20 million. It appears Mr. DePriest has filed the case in order to try to silence Mr. Harmer and get him to retract documents he has provided to Petitioners that show Mr. DePriest and Mrs. DePriest have misrepresented facts and committed perjury regarding MCT Corp. and other affiliates of MCLM. This is evidenced by the fact that MCLM nor the DePriests at any time have filed anything with the FCC to refute the facts that have been provided by Mr. Harmer, which are included here. Thus, those facts must be taken as true and correct.

Part 1 of Attachment 011 contains the complaint. The complaint states at page 4 that Mr. DePriest was Chairman of MCT Corp., which is contrary to what he has told the FCC. In addition, Attachment 011, Part 2, among other items, contains a letter from Mr. DePriest on MCT Corp. letterhead and lists as the address for MCT Corp. Mr. DePriest's home address in Mississippi and his business address in Virginia. Belinda Hudson on behalf of Mr. DePriest, as his executive assistant, signs the letter. This is further evidence that Mr. DePriest controlled MCT Corp. and that Belinda Hudson, the Treasurer and Secretary of MCLM (per evidence presented herein) has direct and personal knowledge of Mr. DePriest's personal and business affairs.

In addition, Attachment 011, Part 2 contains an affidavit from Bart Wise. From evidence presented in this Petition (see e.g. the Exhibit A hereto), Mr. Wise is an investor in the "MC Group" that loaned money to MCLM in September 2005 shortly before MCLM had to make its final payment for Auction No. 61. Mr. Wise apparently loaned $100,000 to MCLM as part of the MC Group. Mr. DePriest personally guaranteed the MC Group loan to MCLM. Mr. DePriest, as Manager of MCLM issued a warrant to the "MC Group" for 20 units in MCLM. MCLM now alleges it represents only 2% of the shares of MCLM.

Further, Mr. Depriest's claim of $20 million in damages in this case against Mr. Harmer, from all the evidence, must be based on his interest in MCLM that he and his wife repeatedly misrepresent to the FCC (the DePriests assert that he has no ownership in MCLM directly or indirectly) because Mr. DePriest has stated during the same time period under oath in the Goad v. DePriest case and the Phillips v. DePriest case (see e.g. Attachment 006 hereto) that he personally has negative net assets. There is no other explanation when comparing Mr. DePriest's representations in the three case. Also, in the case against Mr. Harmer, Mr. DePriest asserts incidental damages of $20 million. Therefore, he must have assets far exceeding that amount. If Mr. DePriest has such large assets it also means he has substantial income, which should have been disclosed to the FCC by Sandra DePriest and him, but was not. In addition, as shown herein, according to Mr. Phillips (see e.g. Attachment 006 hereto), Belinda Hudson in her deposition testimony stated that Mr. DePriest's income goes almost entirely to make payments on assets not in his name. All evidence points toward those assets being the MCLM licenses. This is further proof that MCLM and the DePriests have engaged in Federal false claims.

Attachment 012 contains a letter sent by a Mr. Robert Setzer of Capital-Plus Partners to Congressman Patrick J. Tiberi that was then forwarded to the FCC by Mr. Tiberi. Mr. Setzer's letter states that his company, Capital-Plus Partners, paid WPV over $1 million in relation to WPV's assignment to Nextel (Call Sign WQGK277). Related to Attachment 012 is Attachment 013. See discussion that follows.

Attachment 013 contains a court complaint that Capital-Plus Partners filed against WPV and Mr. DePriest (Part 1) and copies of the court judgments awarding Capital-Plus Partners over $1 million (Part 2 and Part 3). These court documents show that Donald DePriest used WPV and its FCC license as collateral to obtain money from Capital-Plus Partners and that Capital-Plus Partners now has a direct interest in the subject WPV license and the potential to control WPV. The assignment application, File No. 0002994751, has not bee approved or consented to by the

FCC yet. The complaint at Attachment 013, Part 1 contains a copy of the UCC filing between WPV and Capital-Plus Partners (Petitioners have provided it previously to the FCC) that shows WPV and DePriest used the WQGK277 license as collateral and that Capital-Plus Partners has the power to control WPV due to its rights under the agreement, including to all receivables, intangible assets and other assets of WPV and of Mr. DePriest. In fact, since these documents show that Donald DePriest has personally guaranteed the money paid to WPV, then it also means that Capital-Plus Partners has the power to control MCLM since Mr. DePriest, as shown herein, is a controlling interest and owner (if not majority) of MCLM.. Therefore, these Attachment 012 and Attachment 013 show that (1) Donald DePriest has impermissibly used an FCC license as collateral; (2) that he has failed to report Capital-Plus Partner's interest in the WQGK277 license and assignment of authorization, File No. 0002994751, as is required by FCC rules, including Sections 1.65, 1.17, 1.948, 1.2112; and (3) that Capital-Plus Partners has judgments against both WPV and DePriest for over $1 million and therefore has the ability to control MCLM.

Petitioners note here that Mr. DePriest did not disclose the money he got from Capital-Plus Partners in 2007 to either Mr. Goad or Mr. Phillips in those respective cases when he had to list all of his assets and liabilities (see e.g. Attachment 006 hereto). Thus, it appears that Mr. DePriest has violated the court orders in those two cases and misrepresented facts to those parties. This shows a trend of concealment by Mr. DePriest.

All of these 1-13 Attachments show that MCLM lacks the character and fitness to be a Commission licensee and support dismissal or denial of the Application and revocation of the License for the reasons explained herein and in those attachments, including but not limited to repeated misrepresentations, fraud, perjury, violation of FCC rules, failure to disclose ownership, control and affiliates of MCLM, etc.

1a. FCC Prejudice and Deliberately Chilling Warning

Petitioners show here that the facts in the record show the FCC has indeed acted with prejudice toward them with respect to their petitions and filings against MCLM and the License.

First, the FCC, by withholding the information in the MCLM and Affiliates' responses to the EB Letters (defined below) that should have been released publicly almost 5 years ago in Auction No. 61, and not granting Petitioners' FOIA request, FOIA Control No. 2010-379 (see discussion below of this) have effectively limited and diminished Petitioners' constitutional petition rights under Section 309.

Second, the FCC has denied all of Petitioners' petitions and appeals against the License and MCLM applications for it stating that the petition had no *prima facie* evidence that called into question grant of the MCLM applications in the public interest, yet it has commenced two investigations, one under Section 308 and one by the Enforcement Bureau, which upon cursory review, are based entirely on facts in Petitioners' petitions. Thus, the FCC has impermissibly carved Petitioners out of proceedings and continues to deny them their rights under Section 309, apparently so that it can make decisions and take actions in private proceedings with MCLM. And when Petitioners continued to appeal in matters against MCLM, the FCC issued a warning to Petitioners that they may be sanctioned. [7]

These first two items are evidence of clear violations of Petitioners' constitutional rights to petition the government and to a fair hearing.

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[7] The threat of a warning did indeed aggrieve Petitioners. The baseless Bureau warning by itself caused damages because it threatened punitive measures if "Havens" and his companies continued to pursue their FCC petition and appeal rights Congress established, and their First Amendment rights under the Constitution. Petitioners had to consider whether or not to file further appeals because of the risk of sanctions. As the two ongoing FCC investigations into MCLM and its affiliates indicated herein show, Petitioners' petitions and appeals were not frivolous, but were fully sound. The Bureau's warning, granted at MCLM-Mobex's request, was meant to chill Petitioners' rights and attempts, scare them to cease, and signal to MCLM and Mobex that their nonsense would be protected. Indeed, MCLM, Mobex and other aligned merrily cited the warning. Just because a bad cop puts a gun to someone's head but doesn't pull the trigger does not mean harm was not done.

Third, the FCC has chosen to misconstrue its own rules, including Section 1.2105 (and the Commission's own rulemaking that said a decrease in bidding credit was disqualifying) and court precedent, in order to inexplicably grant the MCLM Auction No. 61 application and award it AMTS licenses, even though Petitioners' *prima facie* facts showed MCLM had committed several rule violations, misrepresentations, and fraud (all of which have been further confirmed over the last 5 years in court cases involving Mr. DePriest, admissions to the FCC by MCLM, etc.). In doing so, the FCC has denied Petitioners' rights to those geographic licenses, since two of Petitioners, ENL and ITL, placed the only lawful, qualified high bids. As shown in Petitioners' pleadings in Auction No. 61, court precedents support that those licenses must be granted to one of Petitioners (see the discussion re: *Superior Oil* and *McKay* cases). The FCC has denied ENL and ITL their *Ashbacker* rights, and prevented them from obtaining what they lawfully won at auction almost 5 years ago. This has and continues to seriously damage ENL and ITL and Petitioners' business plans overall.

Fourth, the FCC continues to grant MCLM applications for the auction licenses and allow them to receive benefits from them including via leases and sales, while it continues to ignore Petitioners' facts and arguments that MCLM has committed fraud and repeated willful misrepresentations and violated the U.S. Criminal Code (most of Petitioners facts that are now being investigated by the Enforcement Bureau were presented back in 2005 and should have been investigated prior to granting MCLM the auction licenses).

Fifth, the FCC has failed to apply Section 80.475(a) to MCLM's incumbent AMTS licenses and instead argued that it deleted that rule (when it never did so following the Administrative Procedures Act),[8] then declined to retroactively apply it, even though termination under Sec-

[8] The Bureau has taken the position that the Commission lawfully deleted the coverage requirements of Section 80.475(a) when in fact there is no proof in the FCC record that such a deletion was intended, noticed, commented upon and done in accord with the APA.

tion 80.475(a) occurred without specific Commission action, and thereby granted windfall, unrequested waivers to MCLM for its AMTS incumbent stations. In fact, the Bureau took the position that the Mobex/MCLM AMTS stations met the coverage and continuity of service requirements of Section 80.475(a) when in fact the FCC never conducted any studies and did not have sufficient information from Mobex/MCLM to ever perform such studies, and thus could not have determined if the stations had or had not met the requirements of Section 80.475(a).

Sixth, the FCC, as shown below, has redacted information from 19 pages of documents obtained under FOIA Control No. 2009-089 that was not subject to FOIA Exemption 4 (e.g. the FCC redacted words such as "nothing", "did not charge", "were not"). These impermissible redactions concealed information that was supportive of Petitioners' challenges to MCLM and its licenses, including regarding auto-termination and permanent discontinuance for failure to provide AMTS CMRS service. The impermissible redactions actually reversed the meaning of the factual evidence to the advantage of Mobex/MCLM.

1.b Fatally Tainted Overarching Proceeding
and Prejudice- Warrants Litigation

The overarching proceedings are the proceeding involving License, incumbent licenses and other MCLM licensing from Auction 61, and the background of MCLM, the Depriests as its owners, affiliates, predecessors, etc. This is discussed substantially herein.

Petitioners take the firm position, after years of participating in these proceedings, that the proceedings are fatally tainted by FCC staff prejudice, and unlawful and covert policy directly in violation of the Communications Act, FCC rules and other law. These matters are presented in other sections and exhibits.

In these circumstances, Petition have rights to sue in US District Court the parties and persons responsible in MCLM and the FCC. They do not need to obtain final FCC decisions and then be limited to appeals thereof on the limited basis of deferential *Chevron* review of assumed

good-faith expert agency adjudication. The United Stated Court of Appeals for the Second Circuit has found:

> This Court has recognized that "where resort to the agency would plainly be unavailing in light of its manifest opposition or because it has already evinced its 'special competence' in a manner hostile to petitioner, courts need not bow to the primary jurisdiction of the administrative body." *Bd. of Educ. of the City of New York v. Harris, 622 F.2d 599, 607 (2d Cir. 1979)*….
>
> Ellis could have, but did not …seek the FCC's interpretation or enforcement … oppose Tribune's petition … or …request…reconsideration or review …. Instead, Ellis brought this action directly in the district court …. On this record, Ellis is unable to show that the FCC was hostile to him …[and] that a direct appeal to the FCC would have been futile.

Ellis v. Tribune, 443 F.3d 71 (2006) ("*Ellis*"). Petitioners are making sure by their continued participation in this overarching proceeding, and in this component regarding the subject Application, that they firmly satisfy the requirements of the second paragraph above. However, they assert that there is already ample evidence that they may proceed as described in the first paragraph above. Even an appeal to the DC Circuit Court of any component FCC decision in this overarching proceeding should be, under *Ellis*, stayed until the trial court has a legitimate hearing where the FCC will not or cannot.

1c. The Proceeding on this Application is Fatally Flawed
Including Due to Fundamental Violations of Due Process
Under the Communications Act Regarding the License at Issue

In other parts of this Petition and its appended materials, and referenced and incorporated materials previous filed in the preceding overarching proceedings (centered around the MCLM long form in Auction 61, but also regarding its incumbent stations), Petitioners demonstrate the section 1c caption statement above. This includes but is not limited to the fact that, since year 2005 after Petitioners filed a petition to deny the MCLM long form in Auction 61 (actually, since they filed an objection with similar content prior to the auction, with regard to the MCLM short form in that auction and of the MCLM and Mobex assignment application for the site-based AMTS), to this day, the FCC has repeatedly denied the relief under Section 309(d) and (e) of the

Communications Act that Petitioners have in the most clear terms entirely satisfied—a formal hearing on the MCLM application for Auction 61 and of the MCLM and Mobex application assigning the incumbent stations to MCLM.

This is entirely demonstrated by the Wireless Bureau and then the Enforcement Bureau letters of investigation directed to MCLM and its controllers, owners, and some of its affiliates: these FCC letters literally call into question the very question posed at the start of Section 309 which Petitioners' petition to deny (and following petitions for reconsideration) answered by presenting the required *prima facie* facts establishing said question:[9] these FCC letters posed questions and facts that drew entirely from Petitioners' petitions, thus making entirely clear that the petitions should have been granted upon initial review.

Yet the FCC, instead, refuses to allow Petitioners formal hearing rights in which they can, more effectively than the FCC (and in any case, in accord with their rights) examine (using the services of their litigation counsel, now familiar with MCLM due to years of litigation in courts) MCLM's alleged sole owners and controllers, affiliates, various witnesses and experts, and otherwise engage in proper fact finding.

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[9] A "substantial" question for this purpose is a question which "arouses sufficient doubt on the point that further inquiry is called for." Citizens for Jazz on WRVR, Inc. v. FCC, 775 F.2d 393, 395 (D.C. Cir. 1985). In the cases of the MCLM long form in Auction 61 and the MCLM and Mobex incumbent assignment application, not only did Petitioners' petitions raise such doubt, but the FCC acted on the doubt by the noted six letters of investigation and repeated the questions. It acted on it in a way to control the proceeding for its undisclosed purposes contrary to the requirements of the Communications Act—by conducting its own private investigation and excluding Petitioners from that (except to informally allow Petitioners an undefined opportunity to submit what they choose for purposes of the investigation), and denying the formal hearing called for in Section 309(d) in the circumstance. This is, in fact, how the FCC granted the MCLM licenses, including the one subject of the Application and the Auction No. 61 application (for Auction No. 61 by conducting a secret private hearing with MCLM, in fact granting the essence of their waiver request but speciously suggesting it was not granted, and excluding – simply short-circuiting, Petitioners rights to fully participate in the proceedings on the licenses subject of their petition to deny. And with regard to the MCLM and Mobex incumbent assignment application, the FCC ignored clear facts that the stations had auto-terminated, had conducted impermissible major modifications, failed to construct and failed to address other evidence including but not limited to that MCLM failed to disclose all of its controlling interests, etc.)

By denying those fundamental rights, and at the same time proceeding with accepting for filing, placement on special public notices, and otherwise accommodating ongoing licensing activity by MCLM, the FCC has created a bogus proceeding.

2. MCLM is a "Sham Corporation"
and its Actions are Legally Invalid
And it otherwise is in Default of Rights as an AMTS Licensee

MCLM is in default. MCLM has refused to follow the FCC Declaratory Ruling Orders (issued by Scot Stone of the FCC in years 2009 and 2010 to MCLM) with regard to Rule Section 80.385(b) that requires MCLM to provide to Petitioners, as co-channel geographic licenses, the actual technical parameters of MCLMs site-based (alleged valid and operating) stations. MCLM repeatedly refused the written request Petitioners gave to MCLM for this core purpose of Congress and the FCC in moving from site-based to auctioned geographic licensing.

Since MCLM has elected to violate this rule and these two FCC Declaratory Ruling Orders, MCLM is in default and is not entitled to any licensing action.

See in this regard, Appedix (iii) and Attachment 009.

Regarding the sham corporation issue. As shown by the facts presented in the text and exhibits, MCLM is a "sham corporation" and its actions before the FCC are abuse of process and legally invalid for essentially the same reasons the Commission found in the following decision (emphasis added):

> Examining Crouch's and TBN's conduct from 1987 to 1991 (the period during which TBF held the Miami license), the ALJ concluded that TBN and Crouch exercised de facto control over NMTV and that NMTV was therefore not "minority-controlled." Trinity Broad. of Fla., Inc., Initial Decision of Administrative Law Judge, 10 FCC Rcd 12020 (1995). The ALJ also ruled that "NMTV, Crouch and TBN abused the Commission's processes" not only by creating NMTV as a "sham corporation" to evade the multiple ownership regulation, but also by repeatedly concealing material facts from the Commission that would have demonstrated that TBN controlled NMTV--primarily Duff's employment relationship with TBN and the extensive interrelationship between TBN and NMTV. Id. at 12061 PP 329-30 & n.47. The ALJ concluded that Crouch's conduct in connection with TTI and TTI's representations in its low power applications also supported an abuse of process finding. Id. at 12060 PP 325-26. …. ALJ… finding that be-

> cause of TBN's and Crouch's "willful" and "egregious" misconduct, TBF was unqualified to hold the Miami license. Id. at 12062 PP 331, 333.
> …. "The principals knew," the Commission concluded, "that, because of the relationship between NMTV and TBN, their claim of minority control was at best doubtful and at worst false." Id. at 13601 P 83. This "serious abuse of process with respect to NMTV's full power applications" warranted denying TBF's license renewal application. Id. at 13601 P 85, 13610 PP 100-01.

MCLM has engaged in all the rule violations and bad acts described above, but more clearly and extensively, and should be subject to the same result- denial of the subject application and license due to disqualification.

In attempt to escape the mounting evidence, MCLM owners have played games in their responses to the Commission and in the pleadings responding to Petitioners in the related Sections 308 and 309 Proceedings (described further below). A principal game is that the officers and other authorized representatives of MCLM are different things (they are not in law), and in any case they are whatever and who ever the MCLM owners want them to be at a given time—retroactively to fit the story they need to tell at a particular time. That is a sham operation.

In *Morrison v. Olson*, 487 U.S. 654 (1988), the US Supreme Court discusses the meaning of officer in context of United States government. The concepts of an "officer" have been the same since before the start of the nation and formulation of the Constitution, and from there, flow to the States and to corporate entities under State law. The concept is entirely simple and clear: there is an ultimate authority in a public or private corporate or legal entity that delegates by formal process authority to one or more levels of officers, various powers of an office to take acts for the legal entity that are binding on the entity.

For the natural persons that own and control the entity to turn around and announce to the outside parties that must rely their previously named "officers" are not in fact "officers," or that they were officers only in name but not in function, or that on any particular day there are no officers other than what the controllers retroactively assert, or that their named officers' acts have no consequence upon the entity (and persons with the control that authorized such "officers") –

utterly destroys the meaning of the word “officer” and with that foundation of the legal entity to exist and re recongized apart from the control and whim of the controlling persons. For example, the United States Claims Court has held:

> On April 23, 1980, Mr. Powers had no authority to serve as contracting officer on plaintiff's contract. [18] See *Schoenbrod v. United States,* 410 F.2d 400, 404, 187 Ct. Cl. 627 (1969).
>
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>
> 18 ….Defendant's allusion to Mr. Powers' "implied authority" to serve as contracting officer is sheer sophistry…. ("contracting officer" means one who "by appointment in accordance with applicable regulations has the authority to enter into and administer contracts….
>
> ---
>
> Indeed, defendant seems tacitly to concede that Mr. Powers lacked actual authority, on April 23, 1980, to act as contracting officer on plaintiffs contract. It urges, rather, that "a retroactive delegation of authority," or a "ratification" of Mr. Powers' "assertion of authority," occurred, and that the termination for default should accordingly be upheld on one of these grounds. The notion is unsound.
>
> Contracting officers are authorized to act within the limits of the authority delegated to them, and are to be selected and designated as contracting officers before becoming eligible to act as such. 41 CFR §§ 1-1.402, 1-1.404 (1980). They are not to be designated retroactively, and after the fact. This is apparent from a fair reading of the applicable statute and procurement regulations pertaining to contracting officers, and it represents a fair and logical interpretation of the definition of "Contracting Officer" in plaintiff's contract. [19] The court cannot accept the government's retroactive delegation (or designation) argument.
>
> ---
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> 19 Defendant's assertion that it knows nothing that "would prohibit a retroactive delegation of authority" turns the question on its head.
>
> ---
>
> Nor is defendant's ratification theory any more valid….Defendant cites no apposite authority for the proposition that ratification would be permissible here, nor has the court discovered any.

Timberland v. United States, 8 Cl. Ct. 653 (1985) (emphasis added). The above means not only does a person have to be an officer by documented delegated authority prior to acting as an officer for any contract (the Application is in effect a contract as well as additional legal certifications and acts), but someone cannot retroactively be made into an officer by the person with authority to delegate. The record of MCLM makes clear that MCLM does not exist as a legal entity since it has no officers that its owners and controllers, the DePriests, establish and stand by

and that the Government including the FCC and other outside parties can rely upon. The De-Priests' actual history asserts that MCLM can take, renounce, and amend, any action taken in its name. It is a sham puppet legal entity.

The US Court of Appeals for the Second Circuit discussed the meaning of "officers" in a legal entity (emphasis added):

> …. *Colby v. Klune*, 178 F.2d 872 (2 Cir. 1949). In *Colby* we held that a corporate employee who did not hold the title of a corporate officer nevertheless could be an officer within the meaning of § 16(b) if he "perform[ed] important executive duties of such character that he would be likely, in discharging these duties, to obtain confidential information about the company's affairs that would aid him if he engaged in personal market transactions"….
>
> …. Here we must decide whether Crotty's title as a vice-president in and of itself brings him within the purview of § 16(b), whereas the issue in *Colby* was whether an employee's duties could bring him under § 16(b) even if he lacked a title as a corporate officer. We believe that the reasoning of *Colby* applies here. In *Colby* we held that "it is immaterial how [an employee's] functions are labelled or how defined in the by-laws, or that he does or does not act under the supervision of some other corporate representative". *Id.* In short, *Colby* established as the law of this Circuit that it is an employee's duties and responsibilities -- rather than his actual title -- that determine whether he is an officer within the purview of § 16(b). *See also SEC v. Aaron*, 605 F.2d 612, 616-17 (2 Cir. 1979), *vacated on other grounds*, 446 U.S. 680, 64 L. Ed. 2d 611, 100 S. Ct. 1945 (1980); *Ellerin v. Massachusetts Mutual Life Ins. Co.*, 270 F.2d 259, 265 (2 Cir. 1959); *Morales v. Holiday Inns, Inc.*, 366 F. Supp. 760, 762-63 (S.D.N.Y. 1973) (Gurfein, J.) (function rather than title controls under § 16(b)). … [10]

C.R.A Realty v. Crotty and United Artists Communications 878 F.2d 562; 1989 U.S. App. LEXIS 9231; Fed. Sec. L. Rep. (CCH) P94,483 (1989) (emphasis added). Likese, the DC Circuit Court found:

> …definition of an officer of a corporate violator as one responsibly connected with the corporate licensee….

Quinn v. Earl Butz, 510 F.2d 743 (1975) (emphasis added).

In the case of the Application, John Reardon performed the "duties and responsibilies" of

[10] Similarly, the FCC noted in In the Matter of Amendment of Part 62, FCC 84-627 (1984) (emphasis added):

> Further, it is clear from the broad definition of "officer" as set forth in 47 C.F.R. § 62.2(a) that the requirement for § 212 authorization stems from the duties, and not the title, of the office

certifying and signing under oath to the FCC—"it is immaterial how [his]…functions are labelled or how defined in the by-laws," "it is [his] employee's duties and responsibilities—rather than his actual title—that deternies…he is an officer." If he certified and signed "as one responsibly connected with the corporate licensee," he necessarily had to do that as an officer, according to the above summarized legal authority.

However, Sandra DePriest, the alleged 100% owner and ultimate controller of MCLM, told the FCC under oath when questioned exactly on this point that John Reardon was never and is not an officer of any kind in MCLM. Thus, the Application is an act by someone who did not have the duty, responsibility and authority to certify and sign them, and is thus defective, including under 47 USC Sections 308 and 309, 47 CFR Section 1.934, and the requirements of the Application forms and instructions for certification and signature.

3. Defects of Application Requiring Dismissal

Petitioners in this section point out some initial defects in the Application. They also provide additional defects and facts and arguments as to why the Application should be dismissed or denied in the other sections contained in the Petition.

a. The Application is Unauthorized and Must be Summarily Dismissed

The Application is unauthorized and must be summarily dismissed for three reasons. The reasons are summarily given in this Section but further provided in other sections and exhibits to this Petition.

1. The Application was signed by John Reardon, but he is not an officer-- an authorized person to act for-- MCLM for two reasons noted below. Thus, the Application is defective and must be summarily dismissed. See Exhibit 13 hereto regarding MCLM misuse of the word "officer" and related matters. In sum, MCLM is a Delaware domiciled legal entity. "Officer" used in corporate law including Delaware law, has a clearly established broad meaning as anyone del-

egated authority (from the ultimate controlling person or board, to a lower level) to act for and legally bind the legal entity. Sandra DePriest, who alleges to be the sole owner and controller of MCLM, stated unequivocally that John Reardon has never been an officer in MCLM's responses in the "Enforcement Proceeding" and "Section 308 Proceeding" and "Section 309 Proceeding" (terms defined below in Reference and Incorporation section).[11] MCLM stated in its response in the Enforcement Proceeding at page 4: "John Reardon has never been an officer of Maritime."[12] Thus, the Application signed by John Reardon was not certified, signed and submitted by an "officer"- someone authorized to act for the legal entity MCLM.

2. In addition, the ownership disclosures are deliberately and demonstrably, under FCC law, false. Sandra DePriest is only one of the co-controller of MCLM: her husband Donald Depriest is the other. This is demonstrated in the text included and referenced below and in the exhibits and attachments hereto. Since the ownership and control vests equally in Sandra and Donald DePriest (if not solely in Mr. DePriest), the Application submitted is unauthorized and thus defective. There is no evidence anywhere of how the co-control is exercised in MCLM except (i) a series of contradictory statements by Sandra DePriest and Donald DePriest before the FCC and other governmental and court authorities, (ii) and even statements by each that they do not know what the other one is doing or knows about MCLM, and (iii) statements that they made a fundamental series of mistakes they cannot explain in their past acts of signing and filing government documents using the wrong dates and titles or they said do not mean what the titles mean in established law, in court testimony, in FCC sworn statements, etc., as to what their of-

[11] However, keeping up with its habit of contradictory statements, MCLM has filed several applications and other documents with the FCC and received documents from the FCC listing Mr. Reardon as MCLM's President and/or Chief Executive Officer. See Exhibit 12 and Attachment 001, Attachment 003, Attachment 004 and Attachment 005 that contain documents, including FCC staff communications and applications, showing this (yellow text boxes have been added to help point out relevant information in the documents and can be quickly found visually when reviewing these).

[12] *Letter* from The Reverend Sandra DePriest to Marlene H. Dortch, Secretary, Federal Communications Commission, dated March 29, 2010 re: File No. EB-09-IH-1751.

ficer, director and other positions were, and (iv) use of signatures that have dramatically different script for the same person, and same script for different persons; and the like. Thus, since there is no identifiable control in MCLM, MCLM cannot take any actions including authorizing any person to act for the entity (making someone an officer for all or some actions). In addition, as discussed below, per MCLM UCC filings, there are other unidentified controlling interest holders in MCLM and MCLM has undertaken unlawful transfers of control (pledging all of its assets, including all of its FCC license assets as collateral).

3. MCLM is a sham entity for reasons partly indicated in item 2 immediately above (and the section on that topic above), and further below, and cannot be recognized as an entity separate from the owners of its assets and liabilities. Thus, MCLM cannot take any legally valid action including in executing a contract with Assignee for purchase of the spectrum in the Application and co-submitting the Application before the FCC with Assignee.

b. False and Incorrect Certifications Require Dismissal

The Application contains false and incorrect certifications that require its dismissal. The Application's answer to the Basic Qualification question at item 100 is incorrect. MCLM's predecessor-in-interest, Mobex, had licenses terminated in the FCC's 2004 AMTS "audits" and more recently MCLM had its incumbent Chicago station revoked per *Memorandum Opinion and Order*, FCC 10-39, released March 16, 2010. Also, the assignor certification statement # 3 is incorrect on the Assignment, as shown in the WCB Proceeding (term is defined below in Reference and Incorporation section) and elsewhere, MCLM has failed to file Form 499-A and pay required regulatory fees for its AMTS CMRS incumbent stations (MCLM admits to operating its incumbent stations unlawfully as PMRS. Its AMTS licenses are CMRS and thus required filing of USF and other regulatory fees quarterly and annually). Thus, it is in default and delinquent on non-tax money owed to the FCC. MCLM owes vast amounts in regards to Universal Service Fund fees for its operation of AMTS CMRS stations nationwide for over a decade, where

MCLM has admitted in the last year to having failed to submit full and accurate filings disclosing those commercial operations, on which fees must be paid annually, and to having operated unlawfully those stations as PMRS and not paying the required CMRS fees (MCLM's licenses are CMRS). MCLM has also, in FCC records, failed to submit required waiver applications for most of its AMTS licensed stations which waivers were clearly needed to be accepted as constructed and not auto-terminated when MCLM failed to meet the required continuity of coverage requirements, as described below. Each such waiver application, that was required, had to be paid for. MCLM also failed to timely pay sums due in Auction No. 61, and MCLM-Mobex failed to pay fees for large numbers of waiver applications for construction deadline extensions for site-based AMTS licenses nationwide.

Further, as shown herein, since MCLM did not qualify for any bidding credit, even assuming that this was not disqualifying (which it is), the MCLM is delinquent on paying Auction No. 61 sums to the FCC. In addition, MCLM's Form 602 fails to list Donald DePriest, who is clearly a controlling interest under FCC rules per the facts presented herein and MCLM's own admissions to the FCC.

4. Reference and Incorporation

Petitioners hereby reference and incorporate all the facts and arguments in their filings in the following proceedings (the "Related Proceedings") rather than reiterate them here again (only the lead filing is listed for each below for convenience, but Petitioners hereby reference and incorporate all filings they have made in the Related Proceedings) and also the MCLM, Wireless Properties of Virginia, Inc. and Maritel Inc. responses in the Section 308 Proceeding and Enforcement Proceeding noted below (the "MCLM and Affiliates Responses"). It is more efficient for the parties to the instant proceeding if Petitioners reference and incorporate their filings in the below proceedings since then the parties do not have to restructure or read and review and comment differently on facts and arguments that are already in filings before the FCC. (NOTE: the

mixed alpha and numeric labeling system below was used in past filings and is maintained here for consistency, given that the same parties and FCC staff are involved.)

(a) Supplement to Petition for Reconsideration Based on New Facts filed by Intelligent Transportation & Monitoring Wireless LLC et al., dated March 9, 2010 and filed March 10, 2010 under File No. 0002303355 on ULS. ("Supplement to New Recon")—*and all Petitioners' filings on this File No. after that date* (the "Additional Filings")

(b) Letter and its attachments from Warren Havens to the Enforcement Bureau filed on March 13, 2010 under File No. 000230355 on ULS (the "EB Letter")

(c) Enforcement Bureau Letters of Investigation re: File No. EB-09-IH-1751 dated February 26, 2010 and addressed to MCLM, Sandra DePriest, Donald DePRiest, Maritel, and Wireless Properties of Virginia, Inc. (the "Enforcement Proceeding")

(d) Warren Havens email to FCC Commissioners re: the MCLM Opposition for Motion for Extension of Time to Reply dated March 16, 2010 (the "Commissioners Email"). To be filed on ULS under File No. 0002303355.

(e) Warren Havens email to FCC Wireless Telecommunications Bureau and Enforcement Bureau staff in charge of the Section 308 investigation and Enforcement Bureau investigation of MCLM dated April 14, 2010 that contains 3 Motions to the FCC (the "3 Motions Email"). Filed on ULS under File No. 0002303355.

(f) *Petition for Reconsideration or in the Alternative Section 1.41 Request*, filed by Environmentel LLC et al. on March 19, 2010 re: leases to Pinnacle Wireless and Evergreen School District, File Nos. 0003909446 and 0004014426. Errata Copy. (the "Leases Recon")

(g) *Petition for Reconsideration Based on New Facts*, filed by Environmentel LLC et al. on April 15, 2010 re: *Memorandum Opinion and Order*, FCC 10-39, released March 16, 2010, and various FCC-license applications involving MCLM (the "Assignment Recon")

(h) *Petition for Reconsideration, or in the Alternative Section 1.41 Request*, filed by Environmentel LLC et al. on April 23, 2010 re: an MCLM lease to Pinnacle Wireless, File No. 0004136453, and Call Sign WQGF315 (the "Pinnacle Recon")

(i) *Petition to Deny, or in the Alternative Section 1.41 Request*, filed by Environmentel et al. on April 28, 2010 in WT Docket No. 10-83 regarding an assignment of authorization application and related waivers filed by MCLM and Southern California Regional Rail Authority, File Nos. 0004153701 and 0004144435 (the "SCRRA Petition").

(j) All supplements and supporting showings filed by any of Petitioners in WT Docket No. 10-83 in support of the SCRRA Petition (see filings received on 5/31/10, 6/8/10 and 7/13/10 by any or all of Petitioners) (the "SCRRA Petition Supplements")

(k) All supplements and supporting showings filed by any of Petitioners under MCLM application File No. 0002303355 regarding the pending Section 309 and Section 308 proceedings. (see filings made on 5/10/10, 5/17/10/, 5/27/10, 6/8/10, 7/13/10, and 7/14/10 by any or all of Petitioners). (the "Auction 61 Further Supplements")

(1) See Letters dated 8/18/09 from Scot Stone, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau to Maritime Communications/Land Mobile LLC and Dennis Brown, MariTel, Inc. and Russell Fox, and Donald DePriest and Wireless Properties of Virginia, Inc. re: File Nos. 0002303355, 0003463998, et al. (the "3 Letters" or the "Section 308 Proceeding").

(2) *Petition for Reconsideration Based on New Facts*, filed by Environmentel LLC et al. on 9/14/09 re: File No. 0002303355, DA 07-1196. (the "New Recon")

(3) *Application for Review*, filed 4/9/07, filed by Petitioners, except for Telesaurus Holdings GB LLC (THL), regarding *Order on Reconsideration*, DA 07-1196 and File No. 0002303355 in Auction No. 61 (Errata version filed). (the "61 ApRev"). See also the recent supplement filed in this proceeding by Petitioners (THL and the rest of Petitioners filed separate supplements, however, THL's supplement only references and incorporates the others supplement). (the "Supplement")

(4) *Petition for Reconsideration*, filed 4/9/07, by Telesaurus Holdings GB LLC regarding *Order on Reconsideration*, DA 07-1196 and File No. 0002303355 in Auction No. 61 (the "61 Recon").

((2), (3) and (4) together, the "Auction No. 61 Proceedings" or the "Section 309 Proceeding")

(5) Application for Review, filed 11/19/07, by Petitioners regarding *Order on Reconsideration*, DA 07-4345, and assignment of authorization application File Nos. 0002438737-39, 0002438741-42, 0002438744, 0002438746, 0002438749, 0002438759, 0002633764, 0002633769, 0002635143 (assignment from Maritel, Inc. and its subsidiaries (together "Maritel") to Motorola) (the "Assignment ApRev")

(6) *Petition to Deny and Petition for Reconsideration*, submitted by Telesaurus VPC LLC et al. (Petitioners) on 7/18/08, re: transfer of control applications, File Nos. 0003463998, 0003470447, 0003470497, 0003470527, 0003470576, 0003470583, 0003470593, 0003470602, 0003470608, 0003470613 (the "Transfers Proceeding")

(7) *Petition to Deny,* submitted by Telesaurus VPC LLC et al. (Petitioenrs) on 8/27/08, re: *de facto* transfer lease applications, File Nos. 0003516654, 0003516656, 0003534598, 0003534602, 0003534763, 0003534766, 0003534767, 0003534768, 0003535087 (the "Leases Proceeding")

((5), (6) and (7) together the "Maritel Proceedings")

(8) Reply Comments, Request to Deny Petition for Reconsideration and Request for Sanctions, filed by Telesaurus VPC LLC et al on 1/29/09 in WC Docket No. 06-122 and under File No. 0002303355, regarding a petition for reconsideration filed by MCLM of a Wireline Competition Bureau Order.

(9) Reply Comments and Request to Deny Petition for Reconsideration, filed by Skybridge Spectrum Foundation on 1/29/09 in WC Docket No. 06-122 and under File No. 0002303355, regarding a petition for reconsideration filed by MCLM of a Wireline Competition Bureau Order.

(10) Notice to Supplement or File New Petitions for Reconsideration Based on New Facts, filed by Petitioners on 9/25/08 under File No. 000230355 et al.

((8), (9) and (10) together, the "WCB Proceedings")

(11) Application for Review: "In the Matter of Mobex Network Services, LLC to Renew Licenses for Automated Maritime Telecommunications System (AMTS) Station in Various Locations in the United States; To Transfer Control of AMTS Licenses; To Assign AMTS Licenses", filed by Petitioners, except THL, re: Order on Reconsideration, DA 07-148, re: File Nos. 0001370847, 0001370848, 0001370850, 0001600664, 0001768691, 0001885281, 0002197542

(12) Petition for Reconsideration: "In the Matter of Mobex Network Services, LLC to Renew Licenses for Automated Maritime Telecommunications System (AMTS) Station in Various Locations in the United States; To Transfer Control of AMTS Licenses; To Assign AMTS Licenses" filed by THL re: Order on Reconsideration, DA 07-148, re: File Nos. 0001370847, 0001370848, 0001370850, 0001600664, 0001768691, 0001885281, 0002197542

(13) Application for Review: "In the Matter of Renewal Applications of Mobex Network Services, LLC for Automated Maritime Telecommunications Systems", of Order on Reconsideration, DA 05-2492, re: File Nos. 0001082495-0001082548

(14) Petition for Reconsideration: "In the Matter of Renewal Applications of Mobex Network Services, LLC for Automated Maritime Telecommunications Systems" of Order on Reconsideration, DA 05-2492, re: File Nos. 0001082495-0001082548

(15) Application for Review: "In the Matter of Mobex Network Services, LLC Applications to Modify AMTS Licenses" of *Order*, DA 07-294, re: File Nos. 0001438800, 0001439011

(16) Petition for Reconsideration: "In the Matter of Mobex Network Services, LLC Applications for Renewal of AMTS Licenses; Application to Modify AMTS License of *Order*, DA 07-294, re: File Nos. 0002363519, 0002363520, 0002363521, 0001438800

((11) thru (16) together, the "Site-Based Proceedings")

((a)-(k) and (1) thru (16) together, the "Related Proceedings")

First, Petitioners intend to file additional new facts and information that they have discovered regarding MCLM, including per the MCLM and Affiliates Responses,[13] in the Section 308 Proceeding and Section 309 Proceeding and Enforcement Proceeding. Those additional new

[13] Petitioners received heavily redacted MCLM and Affiliates Responses to the Enforcement Proceeding. Warren Havens sent an email to Mr. Scot Stone, Mr. Jeffrey Tobias, and Mr. Brian Carter on 4/13/10 asking that Petitioners be provided complete, unredacted copies of the MCLM and Affiliates Responses to the Enforcement Proceeding. Petitioners did not get a response to that request. They therefore filed a FOIA request asking for all records filed in the MCLM and Affiliates Responses, FOIA Control No. 2010-379. As discussed herein, that request was denied. Petitioners are prejudiced until they get a complete copy of those MCLM and Affiliates Responses to the Section 308 Proceeding and Enforcement Proceeding, so they are filing what they can at this time. However, Petitioners reserve the right to amend and supplement their Petition in the subject proceeding with any additional new facts they may discover once they obtain a complete copy of the MCLM and Affiliates Responses to both the Section 308 Proceeding and Enforcement Proceeding.

facts include further evidence of MCLM rule violations, deliberate misrepresentations, lack of candor and fraud and should be considered in the instant proceeding and are hereby referenced and incorporated without further filing by Petitioners in the instant proceeding.

In addition, the MCLM and Affiliates Responses in the Section 308 Proceeding include admissions by MCLM that it failed to disclose over 20 additional affiliates and their revenues including that it failed to list millions in additional attributable gross revenues (at least what MCLM alleges at this time, however, Petitioners have shown that there is much more attributable gross revenue, and in any case, the FCC can no longer rely on MCLM's representations and should proceed to request tax returns and accounting from each of the affiliates and the IRS—that is if the FCC does not find there is already sufficient information to disqualify MCLM as a licensee) and that Mr. DePriest has been listed on the Communications Investments, Inc. (the controlling entity in MCLM) State of Mississippi annual corporate reports as its Director from 2005-present, meaning that Donald DePriest has had control of MCLM since it began (all of those annual reports were filed and signed under oath and certified as truthful, including by Sandra DePriest—see Mississippi business records for Communications Investments, Inc. at https://business.sos.state.ms.us/corp/soskb/csearch.asp). Further, MCLM admits in its 9/30/09 response to the Section 308 Proceeding (the "MCLM Response") that Mr. DePriest is a director of MCT Corp., but then fails to list MCT Corp. as an affiliate and provide its gross revenues and in the MCLM and Affiliates Responses to the Enforcement Proceeding MCLM did not provide gross revenue information to Petitioners (Petitioners showed in the Section 309 Proceeding that MCT Corp. was an affiliate, which MCLM now admits, and that it had tens of millions in revenues).

Also, the MCLM Response provides an "Incumbency Certificate for Maritime Communications/Land Mobile, LLC".[14] This documents shows that MCLM has pledged all of its as-

[14] That certificate states:

"(1) a $4,000,000.00 non-revolving credit facility from Pinnacle National Bank to

sets, which include primarily, if not entirely, its AMTS licenses, in return for a $4 million credit facility and that apparently there are promissory notes and loan agreements related to this credit facility. However, FCC licenses cannot be used as collateral for a loan and by doing so and pledging all assets to support the loan makes Pinnacle National Bank a controlling interests holder in the AMTS licenses and an affiliate of MCLM under FCC rules, which means there was an unlawful transfer of control (it was never reported to the FCC). Also, MCLM failed to provide any of the agreements with Pinnacle National Bank to the FCC in the Auction No. 61 Proceedings or the Section 308 Proceeding and did not provide a copy to Petitioners in the Enforcement Proceeding. Further, the Donald DePriest and Wireless Properties of Virginia, Inc. ("WPV") 9/30/09 response in the Section 308 Proceeding asserts that Mr. DePriest was reduced to less than majority control and ownership in Maritel in the 2003-2004 timeframe, yet Mr. DePriest never filed a transfer of control application with the FCC as would have been required if that were true. Contrary to this, the Maritel response in the Section 308 Proceeding asserts that Mr. DePriest still did control Maritel. The FCC must resolve this conflict; however, if Mr. DePriest and WPV's position is true, then it means that Mr. DePriest never filed the required transfer of control application with the FCC for several years (lacked candor, hid and misrepresented facts) and that the actions of Maritel from that point forward are not effective since the actual ownership and control were not known by the FCC.

These Related Proceedings are relevant to the instant proceeding for the obvious reasons discussed in each and include, but are not limited to, the clear facts and arguments that MCLM and Donald DePriest ("DePriest"), its co-controller (and actual controller as shown by Petitioners' in the Auction No. 61 Proceedings including by control of Communications Investments,

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> the LLC; and (2) the execution of all documents required by Pinnacle National Bank to evidence, secure and document said credit facility, including without limitation, a promissory note, security agreements pledging all the assets of the LLC to secure said credit facility, a loan agreement, and all other documents required by Lender in connection with said credit facility."

Inc. per State of Mississippi records and per his role as Manager and Director of MCLM as shown in court cases involving Mr. DePriest and MCLM—see e.g. New Recon at Sections 4, 5 and 6, pages 18-31, and Exhibits A-D hereto) committed unauthorized transfers of control in MCLM and its AMTS licenses, and lack the required character and fitness to be Commission licensees, including, but not limited to, that they have lacked candor, made deliberate misrepresentations, false certifications and statements, failed to disclose affiliates, failed to disclose gross revenues for affiliates, failed to disclose ownership and control of affiliates and FCC regulated entities, failed to disclose all directors and officers (see e.g. New Recon facts and discussion regarding Mr. DePriest and Ms. Belinda Hudson, and Exhibits A-D hereto) sought a bidding credit MCLM was not entitled to receive, failed to disclose bidding agreements and other contractual relationships, etc. in the Auction No. 61 proceedings regarding MCLM's participation in Auction No. 61 and its application (both Form 175 and Form 601). The New Recon also shows that MCLM's site-based AMTS licenses automatically terminated for failure to meet the requirements of Section 80.475(a) in effect at the time of the construction deadline for those licenses and that MCLM, and its predecessor-in-interest Mobex, has never turned those back in for cancellation as required by FCC rules (see e.g. New Recon at Section 4 and Section 10 and pages 20, 22 and 37-38).

The Supplement, noted above, is yet another example of DePriest's failure to be truthful in FCC proceedings. It reveals among other things that DePriest has always misrepresented in the Auction No. 61 proceeding that he never controlled Maritel, which has been shown to be false in the Maritel Proceedings in which DePriest admits he does control Maritel.

The Auction No. 61 Proceedings, the Section 308 Proceeding, the Enforcement Proceeding, the Maritel Proceedings and the new facts shown here reveal MCLM misrepresentations of facts and lack of candor about its control, ownership, officers, directors, affiliates and their gross revenues that are relevant to the instant proceeding. It is now overwhelmingly obvious that

MCLM should have been disqualified from Auction No. 61 and that it should not hold any of its AMTS licenses because it deliberately failed to accurately disclose its ownership and control and to list all of its affiliates, and it lacks the required character and fitness. More importantly, MCLM's failure to disclose Mr. DePriest as a controller and owner makes the Applications defective due to an unlawful transfer of control in MCLM.

The newly revealed facts given in the WCB Proceedings are relevant to the instant proceeding because MCLM's misrepresentation of facts and lack of candor in Auction No. 61, in the AMTS service in general and the proceeding against the MCLM 601 are relevant to this proceeding because they further show that MCLM does not have the character and fitness to be a Commission licensee and that its AMTS licenses were operated as PMRS and thus did not meet the requirements for AMTS and thus for keeping the licenses. The WCB Proceedings reveal that MCLM has been misrepresenting that it is operating CMRS AMTS site-based stations (which must be operated as CMRS unless a waiver was granted, and it was not to MCLM or its predecessor Mobex) since MCLM itself argues that it and its predecessor-in-interest , Mobex, did and does not provide CMRS service but only PMRS service and thus should be entitled to a refund of its predecessors-in-interest's, Mobex and Watercom, USF fees including during a period of time, 2005-2006, when MCLM clearly had ownership of the Mobex licenses. However, at no point did MCLM tell the FCC during the subject years of the WCB Proceeding that it was operating as a PMRS provider (providing service to a very restricted group of users) with its CMRS AMTS licenses, and at no point did MCLM turn back in its AMTS site-based licenses for cancellation for failure to operate them as CMRS, which means it permanently discontinued its AMTS service and operated an illegal, unauthorized service.

The facts in the WCB Proceedings clearly show fraud (or sustained repeated gross negligence at the very least that must be taken as fraud, as shown in case law) by MCLM in order to obtain a bidding credit it was not entitled to receive and to avoid Commission rules and disquali-

fication from Auction No. 61 and to avoid cancellation of its site-based AMTS for failure to operate them as CMRS. Further, the Related Proceedings show that MCLM failed to disclose its controlling interests and ownership and therefore the assignment of authorization of the licenses from Mobex to MCLM was therefore defective and must now be rescinded and thus MCLM does not actually hold its incumbent licenses and should not hold the License. MCLM had to lists its actual ownership and control in the Application, but it did not.

As the Supplement noted, an NRTC Update (Exhibit 7 to Supplement) states at pages 4 and 5:

> In addition, through an agreement NRTC has negotiated with MCLM LLC of Jeffersonville, IN, members also could configure systems on the adjacent 217-220 MHz band.
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> Just before the end of 2006, the Federal Communications Commission (FCC) granted MCLM regional licenses in the 217-220 MHz band for all parts of the United States except the Mountain region.[15] (The company is continuing efforts to obtain a license for that region.) Earlier this month, the FCC issued call letters for those frequencies, clearing the way for NRTC offer access to members.
>
> "This gives us a ton of channels for Tait deployment," said Todd Ellis, NRTC's manager, Wireless Systems. "We're ready to move forward with channel leasing for this new spectrum, and have a member lease prepared. Average use fees will be $50 per channel per site per month, with better pricing for more channels and longer leasing terms."

As noted in Related Proceedings, MCLM and NRTC: (1) first disclosed a bidding agreement in their Form 175; (2) then denied an agreement (see e.g. MCLM's "Response to Section 1.41 Request" filed 8/22/05 and the attached 8/18/05 Jack Harvey Declaration—see e.g. page 2, point 7 of the declaration where Mr. Harvey states, "…the Proposed MOU was never executed by ei-

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[15] That is a deliberately false and actionable statement by NRTC to engage in unfair competition in AMTS license based business. It is clear in FCC records which licenses were granted to MCLM in Auction 61 and which were not. MCLM was not granted not only the Mountain AMTS license in Auction 61, but also the Northeast, Southeast, Northwest, Hawaii, or Alaska AMTS licenses. Just as NRTC is hiding the truth here, it conspired with NRTC to hide the truth of its affiliation with MCLM in Auction 61. Further, its "continuing efforts" noted above is by actionable tortuous interference with one of Petitioners' contract to acquire that license from Thomas Kurian which in fact was Closed and reported as consummated to the FCC. The FCC has unlawfully rejected, to date, said consummation.

ther NRTC or MCLM."); (3) then subsequently contradicted this denial and acknowledged a signed agreement, thus making Mr. Harvey's declaration false and perjury, (see e.g. MCLM Opposition to Petition to Deny filed 11/18/05 at footnote 2: "NRTC and MC/LM entered into a memorandum of understanding for the possible lease of spectrum use to NRTC, an arrangement of vendor and vendee….The memorandum of understanding expired by its own terms without a final agreement during the course of the auction…." [an agreement cannot expire if it is not a signed agreement; otherwise it never existed in the first place]); (4) then at the Form 601 stage denied an agreement, did not disclose any on its Form 601 and did not more fully describe the allegedly terminated prior existing agreement as required by Section 1.2107; (5) per the NRTC Update, NRTC is declaring and marketing under an agreement with MCLM to use its AMTS channels; (6) per the purchase agreement between MCLM and BREC, NRTC is noted as an "Encumbrance" in the contract, and then (7) NRTC and MCLM enter into a lease for WQGF315, lease File No. 0003581575, that goes from 10/6/08 until 12/29/16.

It is not credible under any reasonable standard (for a petition to deny under 47 USC §309 standards for prima facie evidence sufficient to call into question the accuracy of Applicant essential statements, and of grant in the public interest) that MCLM had an agreement with NRTC that it knew was disclosable on the Form 175 and did in fact disclose, then later didn't have an agreement at all, and then did have an agreement, then didn't have an agreement, and then finally had an agreement once the auction licenses were granted: the critical threshold stage was the Form 175: and the noted Agreement with NRTC, *that is in fact now being played out*, was then disclosed. From all the evidence, it must be concluded—*at minimum for purposes of a hearing under 47 USC §309(d) and (e)*-- that MCLM and NRTC have always had an agreement and that they merely denied its existence (did not disclose and describe it) on the Form 601, contrary to prior statements in the Form 175 and pleadings, to avoid further scrutiny of the agreement by the FCC and Petitioners and to avoid attribution of NRTC's gross revenues and thus

disqualification from any bidding credit at all, and from the entire action since any change in designated entity "size" (discount level) causes disqualification under clear FCC rules and Orders. Again, at minimum, this type of *prima facie* evidence along with that already presented in this proceeding requires a fact finding hearing. As noted above, MCLM does have an agreement with NRTC shown the Related Proceedings. However, it appears that MCLM and NRTC have not notified the FCC of this agreement or provided a copy of it to their application for Auction No. 61 or supplied it via any other method to the FCC: it is thus presented here.

These facts regarding MCLM and NRTC are evidence of violation of FCC rules, lack of candor, and lack of character and fitness by MCLM. It is important that the FCC consider the entire history of MCLM before it when deciding on the Application because there is obviously a pattern of contradictory statements and lack of candor that becomes apparent.

5. "New" Relevant Facts[16]

With respect to the relevant, new facts presented herein, it was Mobex and MCLM who had an obligation under Sections 1.17, 1.65, 1.2105, 1.2110, 1.2111, 1.2112 and other rules to provide them to the FCC, not Petitioners, thus it is appropriate that the FCC accept this petition to consider the new facts. Many of the new facts were only recently discovered or obtained by Petitioners, and many additional new facts, as noted below, will be obtained once the FCC provides MCLM's and its affiliates' complete responses to the EB's investigation letters. Clearly, consideration of the new facts is in the public interest and will create a more complete and accurate record. Also, the new facts are *prima facie* evidence of decisional significance and if the FCC had known them at the time of making its decisions, then it may have decided differently.

[16] These facts are not new to the instant proceeding, but since they are new to several of the referenced and incorporated proceedings, Petitioners will refer to them herein as new facts. Many of the new facts in this Petition, as stated above, are being provided via reference and incorporation of Petitioners' pleadings in other proceedings that are already before the FCC. As discussed above, that is the most efficient method for providing those new facts for all parties to the instant proceeding. In addition to the discussion above, Petitioners provide here a list and brief discussion and summary of the new facts.

Further, the FCC can at any time consider and address new facts on its own authority. It should do so here.

The facts regarding unlawful transfers of control and failure to disclose Donald DePriest as a controller and owner of MCLM, as well as other persons, are clearly relevant to the instant proceeding since control and ownership are fundamental licensee matters under FCC and cannot be restricted to one proceeding. It would be incorrect per FCC rules, including Sections 1.2111 and 1.2112, for the FCC to restrict facts dealing with these type of issues to the Auction No. 61 proceeding, when licensee control and ownership issues are relevant to all license-related applications filed with the FCC, including assignments, renewals and modifications. At all times, for any application the FCC must know who actually controls and owns a licensee.

In addition, evidence of fraud is not time barred and should always be considered. *See e.g. Butterfield v. FCC*, 99 U.S. App. D.C. 71; 237 F.2d 552 (1956) ("Butterfield"). Petitioners may raise the noted new facts in this Petition for the reasons given in *Butterfield v. FCC*.[17] Also see:

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[17] Where DC Circuit Court held:

> ….In these circumstances nothing in the language of sections 310(b) and 405 deprived the Commission of power to receive the new evidence and to reconsider or redecide the case….
>
> Delay in seeking reopening of the record is a factor to be weighed in the exercise of the Commission's discretion. Here, however, it was excusable. The only reason the appellants' effort to reopen was not made earlier in the proceedings was that the new events which occasioned it were kept secret by WJR for several months. Such a circumstance would have called for reopening the record even under the dissenting opinion in Enterprise. That opinion pointed out that 'there was no concealment', because the successful applicant had disclosed the option agreement a few days before the argument of the petition for rehearing. Our dissenting brother added, however, that 'had it withheld the information until after the (denial of the petition for rehearing) notwithstanding the execution of the agreement (earlier), a very different situation might well be said to have arisen. That is this case.
>
> …. Moreover, appellants should be readmitted to the contest, even if that would serve to prolong it. The new evidence here goes to the foundation of the Commission's decision, so that refusal to reopen the record deprives appellants of their rights as competing applicants….

(i) *Re Beacon Broadcasting Corporation,* FCC FCC96-66 (adopted 2/21/96): reconsideration is appropriate where petitioner shows either material error or omission in original order, or raises additional facts not known or not existing until after petitioner's last opportunity to present such matters, and (ii) *Re Armond J. Rolle* (1971) 31 FCC2d 533: proceedings will be remanded and reopened by newly discovered evidence relied on by petitioner that could not with due diligence have been known at time of hearing, and if proven true, is substantially likely to affect outcome of proceeding. These also apply in to the instant case.

Regarding the information obtained under the below-noted FOIA requests to the FCC, FOIA Control No. 2007-177 and FOIA Control No. 2007-178, this was information that the FCC knew and had at all times and should have made public when issuing its decisions. However, the FCC did not do so, but instead made decisions contrary to these FOIA-obtained facts from its records. This is further support of Petitioners' arguments of FCC prejudice. Therefore, Petitioners should not be prevented from presenting the new facts from the two FOIA requests now since the FCC had the responsibility to make decisions in its orders based on its actual record and rules. When its own records, obtained through FOIA, show that the findings in its orders (which argued as if the FCC had determined that the Mobex incumbent AMTS licenses had met the requirements of Section 80.475(a), or that the coverage and continuity of service requirements of Section 80.475(a) had been lawfully removed per the APA, when in actuality neither had been done) are not based on the FCC's record and rules, but apparently created for the sole purpose of disposing of a petition, then Petitioners must be able to present those facts as evidence of prejudice and to support their petition and its arguments. Otherwise, a government agency could merely use bald assertions of fact to deny a petition without ever having to worry about being

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> …. The Commission will conduct further hearings on the question of differences between WJR's original and modified proposals and will reconsider its grant to WJR in the light of the differences thus disclosed

Butterfield v. FCC, 99 U.S. App. D.C. 71; 237 F.2d 552 (1956). *Underlining added. Footnotes deleted*

confronted with the actual facts obtained via FOIA. A list of certain of the new facts, in addition to those listed above, follows:

New Facts 1**.** MCLM does not exist as a legal entity under corporate law. This is shown clearly in the subject Sections 309 and 308 proceedings (re MCLM Auction 61 long form): MCLM is a sham entity based on assertion and admissions to date (see the MCLM and Affiliates Responses to the Section 308 Proceeding, Enforcement Proceeding and their filings in the Section 309 Proceeding) by persons alleging to be owners and controllers of MCLM, including Sandra and Donald DePriest, there is under law no valid MCLM entity. Regarding persons named or acting as officers of MCLM and acting in its behalf, the DePriests label, remove labels, change meanings, contradict themselves, and so forth-- there is in fact no formal legal entity, but the DePriests use MCLM as a puppet sham entity for their personal false claims and actions before State agencies, the FCC, competitors, third-parties in contract, etc. This is effectively a change in control because the only controlling parties that can be considered under law are the individuals and not the sham corporate entity.

It is now clear that this the core issue in these all proceedings involving MCLM. Petitioners will pursue this issue in court-- either in existing or new litigation against these persons and this sham entity. It is a matter of state corporate law, torts and antitrust law. The substantive law and determination is not under FCC jurisdiction. Of course, the FCC itself can pursue these matters (corporate-shell sham and related) in court, including under 47 USC Sec. 401.

In relation to said court action, Petitioners may at an appropriate early point, request that the FCC hold in abeyance the instant proceeding because the determination by the Court could be decisive on issues in this proceeding including false applications in the name of a sham entity, false statements of control, etc.

New Facts 2. Mobex used all of its FCC AMTS licenses as collateral (see Exhibit 5 hereto and the New Recon and the Supplement to New Recon and its Exhibit 5 that contains copies of

UCC filings by Mobex in which it uses its licenses, all proceed therefrom and all of its assets as collateral), which besides being unlawful, means there was an unauthorized transfer of control since using the licenses as collateral encumbered them and meant the creditor/secured party had the power to control and to obtain Mobex's AMTS licenses if Mobex defaulted or did not meet the conditions for the loan(s) it took. Mobex never disclosed this unlawful transfer of control to the FCC or in its assignment application to MCLM and MCLM never disclosed this fact too. Thus, the subject assignment application from Mobex to MCLM was defective for failure to accurately disclose control in the subject licenses and that means there are no incumbent AMTS licenses (e.g. Call Sign KAE889 or other).[18] In the MCLM Opposition[19] to Petitioners' Supplement to New Recon, MCLM, using the same legal counsel as Mobex, admits that Mobex used its incumbent AMTS license assets as collateral when it states at page 3:

> Havens correctly observed that Mobex Network Services, LLC pledged its station licenses as collateral, see page 3 of Havens' Response-prelim. Havens neglected to note, however, that those security interests have terminated, as has Mobex, itself. While Mobex arguably should not have pledged its licenses, the action was harmless and there is nothing to be gained by taking any action concerning that matter. This issue is moot: Mobex sold its licenses, paid its debts, and was dissolved years ago.

MCLM and its counsel apparently believe that if a licensee is not caught in time or does not admit to taking an unlawful action, then it may get away with it. That is incorrect. The FCC can still take appropriate action against Mobex's unlawful use of the licenses and unlawful transfer of control by revoking the incumbent licenses as it did in the Kay Order proceeding and sanctioning the individuals who operated Mobex at the time per its Form 602 on file then. MCLM's response however does show its disregard for FCC rules. Combined with the fact that MCLM never admitted this evidence to the FCC (it has the same legal counsel and Mr. Reardon was

[18] The FCC has revoked licenses of FCC-licensed entities for unlawful transfer of control. E.g. *Memorandum Opinion & Order*, FCC 10-55, released April 12, 2010 (the "Kay Order").

[19] See *Opposition* by MCLM, March 29, 2010 re: DA 07-1196 and File No. 0002303355.

President of Mobex), this is further support that MCLM lacks candor and the character and fitness to be a Commission licensee.

New Facts 3. This disregard for FCC rules and law not surprisingly appears to have carried over from Mobex to MCLM (as noted above, MCLM has the same legal counsel as Mobex and hired John Reardon, who was the President of Mobex). MCLM has also unlawfully used its AMTS licenses as collateral (see e.g. Exhibit 5 hereto and also Exhibit 5 of the Supplement to New Recon) and therefore also affected an unlawful transfer of control for which it should have its licenses revoked as in the Kay Order proceeding. In 2005 MCLM provided as collateral all of its assets, including the contract rights it had to the subject Mobex licenses that were assigned per the subject assignement application, to Pinnacle National Bank in exchange for a loan/credit facility.

Also, "Schedule 4.5(d) Encumbrances" to the purchase agreement in the BREC Proceeding also lists Pinnacle Bank, N.A., Nashville, TN and Section 6.4 indicates that Pinnacle Bank has some sort of encumbrance or lien against the MCLM licenses that will be taken care of by MCLM at closing (also see above discussion of this). Since the MCLM and BREC purchase agreement also deals with the purchase of MCLM licenses, it can only be assumed, as stated above, that MCLM has used its licenses and possibly all of its FCC licenses, as collateral for a loan.

These new facts are directly relevant to the subject proceeding and control in MCLM and the License. As stated above, MCLM pledged all of its assets, which include its AMTS licenses (and the License), in return for a $4 million credit facility (that money was then used towards Auction No. 61—so, MCLM unlawfully used AMTS licenses to obtain funds to bid and purchase licenses in Auction No. 61). That UCC has not been terminated and thus means that all of MCLM's licenses, including the License, continue to be collateral for that loan. Exhibit 5 hereto and Exhibit 5 to the Supplement to New Recon also contains other UCC filings by MCLM

that state the collateral as, "All of Debtor's assets, wherever located, and whether now owned or hereafter acquired, including all proceeds of same." This necessarily includes all of its FCC licenses since they are clearly part of "All of Debtor's assets" and "now owned or hereafter acquired" (i.e. incumbent licenses, geographic licenses and any licenses to be obtained). As stated above, FCC licenses cannot be used as collateral for a loan and by doing so and pledging all assets and proceeds to support the loan makes Pinnacle National Bank and the other creditors controlling interest holders in the License (and all of MCLM's FCC licenses) and MCLM and also affiliates of MCLM under FCC rules. Therefore, there was an unlawful transfer of control: never reported to and approved by the FCC. As noted above, MCLM has not provided to Petitioners copies of any of the agreements between it and Pinnacle National Bank or the other creditors. In the MCLM Opposition to the Supplement to New Recon at page 3, MCLM states,

> MCLM has not expressly pledged its licenses as collateral. MCLM recognizes that it should have been more detailed in its statement of the collateral but no harm has come from the phrasing of the collateral.

This statement lacks candor. (See the section below on Dennis Brown's history). MCLM's UCC filings are clear that all of MCLM's assets are collateral. By the above, MCLM does not state that its licenses *are not* being used as collateral—or that those holding it *are not affiliates*-- just that they are not "expressly" listed on the UCC filing. One can assume from the UCCs that "All of Debtor's Assets" means all of MCLM's licenses are included. Since MCLM can not clearly come out and state that its licenses are not being used as collateral, and since Petitioners have shown that they are, it must be assumed that MCLM's FCC licenses are backing debt and as such the creditors do have control over MCLM and its FCC licenses, are affiliates, and that MCLM has violated fundamental FCC rules on disclosures, approval, candor, truthfulness, DE bidder qualifications, etc.

New Facts 4. In addition to what is stated above, MCLM failed to disclose its actual control and ownership including that Donald DePriest is an owner and controller of MCLM (see e.g.

the Section 309 Proceeding, the New Recon's facts from MS and TN court cases, and Exhibits A-D hereto) represents another unlawful transfer of control (thus making the subject assignment application of licenses from Mobex to MCLM defective). Since the Application is clearly defective for having failed to list Donald DePriest as a controller and owner in MCLM, as well as other persons (e.g. Belinda Hudson, various creditors, etc.) and since MCLM failed to report the above-noted unlawful transfers of control, then they must be dismissed and the License and all other MCLM licenses revoked from MCLM. Since, as the MCLM Opposition to the Supplement to New Recon at page 3 noted, "Mobex sold its licenses, paid its debts, and was dissolved years ago", the MCLM AMTS incumbent licenses should just be canceled including because there is no entity into which the licenses need be returned (and even if Mobex still existed, the licenses should still be canceled because Mobex got paid for them already and for all the other reasons given herein) and the spectrum allowed to revert to the geographic licenses.

New Facts 5. The Related Proceedings show that MCLM failed to disclose numerous other controlling parties and officers including Belinda Hudson, John Reardon, and others (see e.g. the New Recon and its documentation including Mississippi and Tennessee court case documents (see e.g. Exhibits A-D hereto and 1-13 Attachments) involving Mr. DePriest and MCLM that show Mr. DePriest is the Manager and Director of MCLM, Belinda Hudson is the Treasurer; the 3 Motions Email, Exhibit 1 to the Supplement to New Recon, and Exhibit 12 hereto that show Mr. Reardon is President and Chief Executive Officer). This is further evidence requiring disqualification of MCLM and dismissal of the Applications.

Also, Petitioners point out here that a recent MCLM opposition to petition to deny (the "Opposition") makes new admissions that are contrary to what MCLM and Sandra DePriest have been telling the FCC for years.[20]

[20] *Opposition* filed by MCLM on August 9, 2010 regarding File No. 0004310060, Call Sign WQGF316.

First, regarding the warrant to the "MC Group" for 20 units in MCLM, MCLM now alleges it represents only 2% of the shares of MCLM. Of course, the Opposition fails to point out that this warrant was issued by Donald DePriest as Manager and not by Sandra DePriest. It also fails to state what rights and control those shares have (Not all shares in an LLC are necessarily the same. Some shares may hold all of the voting control or rights to a majority of profits, etc.). Nevertheless, the Opposition is now admitting that Donald DePriest had the power and control over MCLM to issue 2% of the shares of MCLM in a warrant. This admission by MCLM clearly shows Donald DePriest has control in MCLM. However, for the reasons stated herein, MCLM's representations can no longer be relied upon. Thus, the FCC has no basis to believe MCLM's assertions on this point that the warrant only represented 2% and not more. Also, MCLM only makes a bald assertion regarding what percentage the 20 units mean without any actual evidence to back it up.

Further, the Opposition's statement is at odds with the evidence presented on this matter as to what ownership the warrants represented. For the amount of the funds put in for the warrants, and for the high risk of unsecured debt involved, it is not believable that at that early stage of MCLM (where the spectrum cannot be considered worth more than the public auction prices), that said level of funding would obtain only that very minor percentage in equity rights (via the warrants). But in any case, what that evidence showed was that MCLM, Donald DePriest and the funding sources and their counsel understood that issuance of the warrants had to wait for the FCC license matter to be cleared up: There is no reason to put that off, especially when those warrants were overdue to be issued (as the evidence showed), if the ownership percentage, or some level of FCC-disclosable control of affiliation, was not already provided for in the funding deal, explicitly or in some side oral or written instrument or understanding. Also, this is further cause that a hearing must be held. As Petitioners have often demonstrated, if ever there was a

case that required a full factual hearing under Section 309(d) of the Communications Act, this is the one (all MCLM actions before the FCC including, based on, or related to Auction No. 61).

Second, at page 14, the Opposition states, "As he did at page 5 of his Exhibit A, Havens wildly misinterpreted Belinda Hudson's execution of a document at page 37 of his Exhibit A. Hudson signed as treasurer of Communications Investments, Inc., not as treasurer of MCLM." And at page 13, it states, "…Hudson is not now and never had been treasurer of MCLM". Notwithstanding the evidence provided by Petitioners that shows Belinda Hudson is in fact an officer of MCLM and Communications Investments, Inc. ("ComI"), MCLM itself is now belatedly admitting that Belinda Hudson is an officer (Treasurer) of ComI, the controlling entity in MCLM. As such, she clearly had to be listed on MCLM's Form 175 and Form 601 for Auction No. 61 and was not. This also shows MCLM's past statements, under penalty of perjury, that Sandra DePriest was the sole officer of ComI to be false and misleading. On MCLM's Form 175 for Auction No. 61 it stated, "Sandra M. DePriest is the sole officer, director and key management personnel of Communications Investments, Inc." In MCLM's responses to Petitioners' pleadings in the Section 309 Proceeding to date it has denied that Ms. Hudson was an officer of ComI and MCLM. Also, the MCLM and Sandra DePriest responses to the Section 308 Proceeding (see MCLM response dated 9/30/09 at page 3) MCLM and Sandra DePriest stated, "As of February 18, 2005, I was Sole Shareholder and was elected Director and serve as the sole officer and director of CII." And in MCLM's 3/29/10 responses to the Enforcement Bureau regarding its investigation under File No. EB-09-IH-1751, MCLM stated at page 2 that "I [Sandra DePriest] have also remained the President, Secretary and sole director of Communications Investments, Inc. since Don DePriest resigned as President and Director of what was a shell corporation since 1998." However, in those same MCLM 3/29/10 responses at page 2, footnote 3 it states: "It has come to my attention [Sandra DePriest's] in the detailed review of the minutes of the meetings of Maritime that I need to correct a statement made in my earlier LOI responses. In

reviewing the minutes, I see that Belinda Hudson was indeed authorized to sign as Treasurer in the January 6, 2006 minutes of Maritime authorizing her to sign as Treasurer, Exhibit 1 (viii) hereto, as well as in the minutes of Maritime of March 10, 2009 in the opening of a bank account, Exhibit 1 (x) hereto." Yet, now in the Opposition, MCLM is taking a contrary position to those statements and stating that Ms. Hudson has never been the Treasurer of MCLM, but only of ComI. It appears MCLM, the Reverand Sandra DePriest and their attorney cannot get their stories straight. Nevertheless, MCLM is now admitting Belinda Hudson is the Treasurer of ComI and it has already admitted in its responses to the Enforcement Bureau that she is the Treasurer of MCLM. Also, all of the evidence from Petitioners, including the Petition's Exhibit A, shows that she was Treasurer of both since at least September 20, 2005 (Belinda Hudson as an officer of MCLM and ComI also had a duty to timely inform the FCC, but she did not do so). The FCC clearly should move to investigate Belinda Hudson and obtain testimony from her under penalty of perjury, as well as copies of all records she has, regarding her knowledge of MCLM and its affiliates and the DePriests and their affiliates, and the DePriests' and her role in MCLM and its affiliates.

New Facts 6. These involve the New Recon, Supplement to New Recon (and the Supplement to New Recon's Exhibit 1)[21] and the WCB Poceeding, as well as other referenced and incorporated proceedings, contain facts (mainly admissions by Mobex and MCLM) that show Mobex and MCLM have unlawfully operated their AMTS stations as PMRS and that their stations have not been interconnected. AMTS is CMRS and it is required to be interconnected. Mobex's and MCLM's AMTS licenses were not authorized for PMRS. By operating their

[21] The Supplement to New Recon's Exhibit 1 contains 19 pages that SSF obtained under FOIA request. The FCC made certain redactions to the information, however, some of the redacted information was still legible and shows that Mobex (and now MCLM) has not had interconnect and has not been charging USF fees as required of CMRS entities for several years. SSF is appealing the FCC's response and asking for an unredacted copy of the 19 pages as well as other documents that were withheld.

AMTS licenses as PMRS for several years, Mobex and MCLM have not been offering AMTS service and thus their incumbent licenses must be deemed permanently discontinued. In addition, this means that Mobex and MCLM have been operating illegally (outside of their authorization) and the FCC should take appropriate sanctions.

New Facts 7. Likewise, the facts in the proceedings noted in (6) above, show that Mobex and MCLM have failed to pay regulatory and other fees associated with reporting their license operations on Form 499-A since they have illegally operated their AMTS licenses as PMRS and not filed Forms 499-A reporting all of their operations and gross revenues. Therefore, Mobex and MCLM are in default on debt owed to the FCC.

New Facts 8. All of the Related Proceedings show ample evidence that MCLM and Mobex have made repeated and willful misrepresentations, contradictory statements, and lacked candor before the FCC. It is not in the public interest to grant the Application to a party that behaves in such a way. Under its *Character Policy Statement*, the FCC should find that MCLM (and Mobex) lack the character and fitness to be Commission licensees.[22]

New Facts 9**.** The FCC's *Memorandum Opinion and Order*, FCC 10-39, released March 16, 2010, finding of permanent discontinuance of the MCLM Chicago station shows that both Mobex and MCLM maintained and renewed a licensed station that had ceased to operate, yet they never turned the station license back in for cancellation, but instead kept using it to block out competition for the Great Lakes A-block licenses in both AMTS auctions (Chicago is the principle Great Lakes market), and illegally operated a fill-in station. In addition, since the Chicago station has been terminated, then that means there is a break in the continuity of service for the MCLM Great Lakes license and therefore it must be terminated and cannot be assigned or

[22] See e.g. (1) *Applications of PCS 2000, L.P.*, Notice of Apparent Liability for Forfeiture, 12 FCC Rcd 1703 (1997) at ¶ 47. (2) *See also* 47 C.F.R. § 1.17. (3) *See, e.g., Radio Carrollton*, Memorandum Opinion and Order, 69 F.C.C.2d 1139 (1978) at ¶¶ 11,17; (4) *Sea Island*, 60 F.C.C.2d at 157; (5) *RKO General, Inc.*, Decision, 78 F.C.C.2d 1 (1980), *aff'd*, 670 F.2d 215 (D.C. Cir. 1981)

renewed (see new fact below that shows the coverage and continuity of service requirements of Section 80.475(a) were never properly deleted by the Commission under the APA and thus remain effective). This is additional support that MCLM lacks candor (its representations cannot be relied upon) and is not qualified to be a Commission licensee, which is relevant to the Applications.

New Facts 10. Both the Wireless Telecommunications Bureau ("WTB") and Enforcement Bureau ("EB") have commenced investigations of MCLM and its affiliates based on the new and old facts presented by Petitioners and those investigations are ongoing and MCLM and its affiliates have provided additional information and responses in those investigations showing rule violations, misrepresentations and lack of candor. These two investigations are proof that Petitioners facts and arguments have merit and that they must be considered here including with respect to unlawful transfers of control and lack of character and fitness to be a Commission licensee.

New Facts 11. The following new facts support Petitioners arguments regarding FCC prejudice and failure to enforce its rules. They also show that MCLM has failed to follow fundamental FCC rules, failed to provide to Petitioners its actual AMTS incumbent license station operating parameters, which suggests that it is warehousing spectrum, and failed to turn back in auto-terminated licenses for cancellation. Had Havens and other Petitioners known these facts at the time of Auction No. 57 they would have raised additional funds and bid for the A-block spectrum too, or would have done so in Auction No. 61. MCLM, along with Mobex, obviously kept its bogus AMTS incumbent stations to block out competition at Auction No. 61 in order to obtain licenses at a lower cost than it otherwise would have had to bid had it been a lawful, qualified bidder in the first place. All of this is relevant to the Application and supports the Petition's arguments that MCLM lacks candor and does not have the character and fitness to be a Commission licensee.

In 2007, ITL submitted a FOIA request, FOIA Control No. 2007-177, to the FCC asking for all records and documentation of any engineering studies the FCC had conducted to determine if AMTS incumbent licensees had met the requirements of Section 80.475(a) in construction and operation.[23] The FCC responded to the FOIA 2007-177 in a letter.[24] The Letter reveals that the Bureau never conducted any engineering studies to determine if Mobex (or now MCLM) had met the coverage and continuity of service requirements of Section 80.475(a) sufficient for renewal of the subject licenses at the time of submission of the renewal applications for its licenses and all prior renewal applications for its licenses.[25] Apparently, the Bureau must have relied on the representations of Mobex (and previously Regionet or Fred Daniels) that they were meeting the coverage and continuity of service requirements of Section 80.475(a). The FCC has

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[23] In part, ITL stated in its request:

> All records in written (paper or electronic form) that pertain to: (1) all FCC "engineering" (defined below [*]) that was used to consider or determine coverage and other technical requirements stated in FCC Rule Section 80.475(a) in the form of said rule set forth below and any predecessor or successor form of said rule that applies to site-based AMTS (the "Rule"), for any license application or license matter (any original, renewal, amendment, assignment or other licensing application, or any challenge or complaint regarding any such application or any granted license, or any other licensing related matter) …
>
> [*] "Engineering" definition: (1) any determination of any sort by any means--including by use of manual or computer aided mathematical calculations, and including by use of computer generated depictions or descriptions of estimated radio-signal propagation contours or levels-employed to consider or determine "continuity of coverage" "proposing to serve" "technical characteristics," "proposing to locate," "engineering study" or any other matter of a technical nature in the "Rule" defined above.

[24] See *Letter* from Thomas Derenge, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau, to Intelligent Transportation and Warren Havens dated April 3, 2007, regarding FOIA Control No. 2007-177 (the "Letter").

[25] Numerous FCC Orders are clear that Section 80.475(a) required continuity of service and overlapping coverage and could not be licensed for single-site stations see for example: (1) *First Report and Order*, FCC 91-18, Gen Docket No. 88-372, RM-5712, released January 25, 1991, 68 RR 2d 1046, 6 FCC Rcd 437, 1991 FCC LEXIS 368 (the "Nationwide Order"); (2) *Order on Reconsideration*, DA 99-211, Released January 21, 1999, *14 FCC Rcd 1050*, regarding Fred Daniel d/b/a Orion Telecom (Orion) applications seeking AMTS spectrum at various inland locations; and (3) *Memorandum Opinion and Order*, DA 98-1368, released July 9, 1998, *13 FCC Rcd 17474* (the "Great Lakes Order").

recently reiterated that Section 80.475(a) was in effect at the time of the construction deadline for AMTS incumbent licenses and that continuity of service had to be met by them in their operations (until, as the FCC argues, Section 80.475(a) was changed, which it was not as discussed below). See the Letter of April 8, 2009 from Scot Stone, Deputy Chief, Mobility Division, Wireless Telecommunicaitons Bureau to Dennis Brown, counsel for Maritime Communications/Land Mobile LLC, DA 09-793, *24 FCC Rcd 4135*, at footnote 7 (the "MCLM Ruling").[26]

The MCLM Ruling also stated that meeting of the continuity and coverage requirements of Section 80.475(a) had to be per the actual station operating parameters as constructed, not on theoretical station parameters in applications. This is entirely reasonable and consistent with other FCC radio services and is clearly in the public interest since licenses are meant to provide actual service to the public and not theoretical service.[27]

However, MCLM, Mobex and Watercom have never provided to the FCC (nor to Petitioners, after their written demands) their actual station operating parameters as of their AMTS incumbent station licenses' construction deadlines and they have never shown with radio engineer-

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[26] It states (underlining added):

> It is our understanding that MC/LM is concerned that, unless Section 80.385(b) is interpreted as requested, there exists the potential for a geographic AMTS licensee to interpose a station between two of the incumbent's stations. The Commission has concluded, however, that such a scenario will not occur if the incumbent licensee constructed its system in compliance with the then-existing requirement to maintain continuity of service, *see* 47 C.F.R. § 80.475(a) (1999). *See* Amendment of the Commission's Rules Concerning Maritime Communications, *Third Memorandum Opinion and Order*, PR Docket No. 92-257, 18 FCC Rcd 24391, 22401 ¶¶ 23-24 (2003).

[27] The MCLM Ruling stated (underling added):

> …AMTS geographic licensee's obligation to provide co-channel interference protection to an incumbent site-based station to be based on the site-based station's actual operating parameters….When it adopted those rules, the Commission expressly stated that the 38 dBu contours of incumbent licensees were to be calculated on the basis of actual operating parameters, rather than maximum permissible operating parameters….Commission noted that providing protection to incumbents based on their theoretical maximum operating facilities, rather than on their actual operating facilities, would be spectrally inefficient and disserve the public interest.

ing studies using their actual station operating technical parameters at the time of construction that they met the requirements of Section 80.475(a) for their licenses (and they have never provided such a real-life showing using a 38 dBu service contour as the rules currently specify or any other service contour that would provide actual service). The FCC could not assume what the actual station operating parameters were as of the original construction deadline for each of the Mobex/MCLM AMTS incumbent station licenses.[28]

Thus, the FCC simply had no basis whatsoever for determining that the MCLM site-based licenses had met the requirements of Section 80.475(a) and that any renewal applications for those licenses were acceptable for grant and that the licenses had not already automatically terminated without specific Commission action for failure to meet coverage and continuity of service. The Bureau never confirmed in renewing the Mobex/MCLM licenses that they had fulfilled this most fundamental FCC rule for obtaining and maintaining an AMTS license, Section 80.475(a)—the *sine qua non* rule of AMTS. This also means that the FCC had no sound basis for denying Petitioners' petitions and appeals in proceedings against those licenses since it already had sufficient information in its own internal records to show that renewal of the subject licenses was not in the public interest, or at minimum further information on the stations' actual operating parameters and engineering studies were still needed. Thus, all of the FCC's Orders up to this point in those proceedings are defective and must be overturned. Further, Mobex/MCLM had ample time to provide documentation of actual station parameters along with engineering showings of coverage and continuity of service, but they never have (They have at most only provided theoretical studies using a non-FCC accepted radio service contour based on their license application parameters, but not actual construction parameters [e.g. actual antenna type, azimuth and tilt, transmitter type, power level, height, cabling, etc.—all that would be

[28] The FCC's 2004 "audits" did not request any information on the Licenses, although the FCC could have requested actual station parameters for those stations too.

needed to determine an actual service contour], which is what is required since those show real, actual service that is the purpose and intent of the AMTS radio service).

The MCLM Ruling stated that actual station operating parameters must be provided to the geographic licensees, which includes Petitioners; however, after several requests over several years, MCLM and Mobex have both refused to provide such details to Petitioners. This can only mean that they do not have record of what, if anything was constructed, or do not want to provide what they do have because it never met the requirements of Section 80.475(a) and means that their AMTS incumbent station licenses auto-terminated without specific Commission action at the original construction deadlines. Once Petitioners get the actual station parameters from MCLM, whether via Court action or FCC action, Petitioners plan to (and the FCC should, on its own) run the coverage studies under the applicable rule, to verify gaps (again, already shown with sufficient evidence to require a hearing under 47 USC 309(d)), and then revoke the subject licenses, and/or other AMTS licenses of MCLM (and formerly Mobex). Unlike in the 2004 incumbent AMTS station "audit,"[29] this time the FCC should require proof of construction and of the actual station details, including but not limited to site leases, local-government approvals, equipment purchases, installation reports, test and operational reports, CMRS customer proof (although, as discussed herein, MCLM and Mobex have admitted to only be operating unlawfully as PMRS for the last several years at minimum), interconnection proof, station schematics and pictures, insurance-coverage statements of the alleged stations, etc.

In other proceedings before the FCC regarding the AMTS licenses of MCLM (and formerly Mobex), Petitioners have shown in engineering studies (see e.g. studies performed by Ralph Haller in the assignment of authorization proceedings between Mobex and MCLM and Mobex and Clarity and in the AMTS rulemaking) that the Mobex/MCLM AMTS incumbent station li-

[29] The responses under oath in that audit were false since it was entirely clear to the responders, who each had radio engineers, that the stations reported as constructed were not: they failed to meet the threshold construction requirement which was overlapping continuity of coverage.

censes had gaps between them and did not meet the requirements of Section 80.475(a), which means they auto-terminated without specific Commission action and have reverted to the geographic licensees.

At minimum, these new facts are sufficient *prima facie* evidence showing a fundamental error in the FCC's Orders in those proceedings requiring that they be overturned. They show that the FCC could not under the AMTS rules, including Section 80.475(a), grant the Mobex renewal applications that have been submitted for the site-based licenses, and that a hearing and investigation must be held, and that the FCC must conduct the necessary engineering studies with actual station parameters at the time of the original construction deadlines for the subject licenses to determine if Section 80.475(a) was complied with at all times or if the site-based licenses have auto-terminated without specific Commission action because in case of auto-termination the subject spectrum has automatically reverted to the geographic licensees and is now their property. Failure to do this continues to damage Petitioners, who among them are the geographic licensees for the areas of the MCLM site-based licenses (as argued by Petitioners with numerous facts and law MCLM should be disqualified from Auction No. 61 and the A-block spectrum granted to either ENL or ITL).

Petitioners also show here, contrary to the FCC's assertions otherwise, that Section 80.475(a) was never lawfully changed under the Administrative Procedures Act ("APA") to remove the continuity of service requirement.[30] Per the 80.475(a) Letter, the FCC could provide no evidence that the deletion of the coverage and continuity of service requirements of Section 80.475(a) was done properly under the APA. At no time during the AMTS rulemaking did the

[30] See *Letter* from Thomas Derenge, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau, to Skybridge Spectrum Foundation and Warren Havens dated April 3, 2007, regarding FOIA Control No. 2007-178. Per that response, the FCC could provide no evidence that the deletion of the coverage and continuity of service requirements of Section 80.475(a) was done properly under the APA. Petitioners are appealing that. (the "80.475(a) Letter")

FCC give proper notice and allow for a comment period regarding deletion of the coverage and continuity of service requirements of Section 80.475(a). For the Bureau and Commission to assert that they did this, when the clear evidence in their own records shows they did not, could not be more clearly unlawful: Nothing at the FCC has meaning when it misuses uses its power in this way against the public interest and law-abiding licensees to deceptively grant boons to private entities it, especially ones who so regularly and blatantly violate its rules. It is stunning abuse. [31]

New Facts 12. As shown in pleadings referenced above with 2010 dates (including re FN 0003909446) and as discussed above, MCLM Application has false certifications regarding no default on delinquency as to certain Federal debts. Those are false since MCLM owes vast amounts in regards to Universal Service Fund fees for its operation of AMTS CMRS stations nationwide for over a decade. MCLM admitted in the last year to having failed to submit full and accurate filings disclosing those commercial operations, on which fees must be paid annually. (ii) MCLM also, in FCC records, failed to submit required waiver applications for most of its AMTS licensed stations which waivers were clearly needed to be accepted as constructed ion and not auto-terminated when MCLMS failed to meet the required continuity of coverage requirements, as described below. Each such waiver application, that was required, had to be paid for. (iii) MCLM also failed to timely pay sums due in Auction 61 (for unlawfully obtained bidding credits, thus underpayment made long after due under law) (late payment cannot cure disqualification, but by MCLM's position, it could). (iv) MCLM-Mobex failed to pay fees for large numbers of waiver applications for construction deadline extensions for site-based AMTS licenses nationwide. (v) MCLM applications contain a false Basic Qualification since MCLM-

[31] Petitioners appreciate and support FCC goals and the hard work of all at the FCC they have dealt with. On the other hand, arguing to defend the law is in the public interest: Congress gave license applicants and holders petition rights under 47 USC 309 and 405 including to assist FCC staff in legal compliance, even or especially when the latter do not always find time or inclination to pursue it, for obvious reasons that the former have motivation and market information.

Mobex has had AMTS licenses revoked in the 2004 FCC AMTS construction audit, others revoked in Chicago and on the Erie Canal, and AMTS station applications denied including for parts of the Great Lakes.

6. MCLM Admission in NJ Court Case
and other evidence re: Mobex as affiliate

The MCLM Rule 7.1 Disclosure Statement filed in Civil Action No. 08-CV-03094-KSH-PS in the United State District Court, District of New Jersey. This is further additional evidence: MCLM has been caught "red-handed" again misrepresenting its actual affiliates and attributable gross revenues. It, along with the WCB proceeding, WC Docket No. 06-122, and the New Recon and Supplement to New Recon and Attachment 003 reveal that MCLM knowingly misrepresented facts to the WTB and Commission in Auction No. 61 when MCLM stated in its Opposition to Petition to Deny in that proceeding that Mobex was not a predecessor-in-interest and therefore its gross revenues were not attributable. Instead, in a Court of law and before the WCB, MCLM has finally admitted that Mobex was indeed a predecessor-in-interest to MCLM and in fact "merged" into MCLM (Petitioners have always maintained in the Auction No. 61 proceeding re: the MCLM 601 that Mobex, per FCC rules, was always to be considered a predecessor-in-interest and its gross revenues attributable regardless of this new additional evidence). In addition, the Supplement to the New Recon, shows additional new evidence that Mobex was MCLM's affiliate and that it deliberately failed to disclose them as such.

As shown in WC Docket No. 06-122 and the WCB pending proceeding regarding *Order*, DA 08-971, released August 26, 2008, and in MCLM's own Request for Review filed with the WCB, Mobex paid USF fees from 2001-2006 (including during the relevant disclosable years for Auction No. 61—2002, 2003 and 2004) of $1,301,230. This amount of USF fees signifies that MCLM had attributable gross revenues from Mobex that along with its other gross revenues from affiliates it knows would have prevented it from qualifying from any bidding credit in Auc-

tion No. 61 (the USF fees represent only a fraction of a company's gross revenues, thus Mobex's attributable gross revenues would have had to have been several millions of dollars per year, which MCLM knew would have kept it from any bidding credit and so it misrepresented the facts to the FCC). Therefore, MCLM committed fraud and false certifications by lying on its Form 175 and Form 601 in order to obtain the bidding credit for which it knew it never qualified. The Commission cannot overlook these fraudulent actions and must revoke MCLM's FCC licenses, including the License.

MCLM has always been represented by FCC legal counsel, its alleged owner is an attorney and its co-controller, Donald DePriest, is experienced as an owner and controller of other FCC licensees, including Maritel that participated in several FCC auctions; therefore, they knew what they were doing when not disclosing control, affiliates (including those of Mr. DePriest), revenues of affiliates, etc.

See Exhibit 1 to Petitioners' Reply to the MCLM Opposition to Petition to Deny regarding File No. 0004310060 filed 8/23/10 (the "Jackson Reply") that is an email string involving communications from Petitioners to FCC staff and a response from MCLM's attorney, Dennis Brown, regarding FCC Order, DA 10-1013 in which the Wireline Competition Bureau states that Mobex and Watercom are MCLM's predecessors in interest. In Mr. Brown's email, MCLM says it bought Mobex's assets only and thus is not a predecessor in interest. However, as shown herein, that is not a correct analysis. Also, when looking at the evidence presented by Petitioners (including, but not limited to, the Petition's Attachment 003 in which MCLM says Mobex is its predecessor and showing that John Reardon is an officer of MCLM thereby requiring his affiliates, Mobex and Watercom, to be attributable as affiliates and predecessors in interest), it is obvious that Mobex and Watercom are predecessors in interest contrary to Mr. Brown's email and past MCLM assertions and filings. Clearly, MCLM chooses to continue to violate FCC Rules on this point. In fact, before the WCB, MCLM is saying it is the successor in interest to Mobex and

Watercom for purposes of a refund of operational income of these entities, and before the Florida Court (see Attachment 003) it is also taking that position with respect to Mobex contracts and operations, among other things. MCLM is insincere in continuing to argue that Mobex is not a predecessor in interest by acting like the FCC (the WCB in this case) has not found Mobex to be its predecessors in interest as Order, DA 10-1013, has clearly stated.[32]

MCLM failed to comply with FCC finding (contained in its decisions to date on the MCLM long form in Auction 61 and in other decisions cited below), based on irrefutable facts in evidence, that Mobex is the predecessor in interest of MCLM (and MCLM is successor in interest of Mobex) and thus amend its Auction 61 long form to include Mobex and its attributable gross revenues (which for a legal entity include cash and other income)[33] This amendment is required under FCC auction rules and Section 1.65.

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[32] *Order*, DA 10-1013, released June 4, 2010, WC Docket No. 06-122, *25 FCC Rcd 7170,* at paragraph 8 (the "Order") that states the following [underlining added for emphasis):

8. For these reasons, we affirm the Bureau's prior conclusion that Maritime's predecessors were providing telecommunications services from 2001 through 2006 when they offered AMTS and that revenue from these services are subject to universal service contribution assessments.

And at Footnote 18 that states [underling added for emphasis]:

Maritime is incorrect in asserting that the Bureau should have proffered evidence that Watercom and Mobex offered their AMTS indiscriminately. Maritime Petition for Reconsideration at 4. As the applicant requesting a refund, Maritime bore the burden of proffering evidence that its predecessors in interest were the exception to the rule that CMRS providers are treated as common carriers. *See* 47 C.F.R. § 1.41; 47 U.S.C. § 332(c)(1).

[33] E.g., (i) Mobex asserts in its Florida court case against Central Florida Communications, shown in exhibits in the Petition, that it was by contract entitled to specified large spectrum-lease income. Under accounting and tax law, that is income to the party that, as in this case, has a contract claim of right to the income, even if not received when due. (When income due is thus included in accounting and tax returns in one year, since it is lawfully due and claimed, but received in a later year, then it is income in the first year and not the latter year, and if never ultimately received and uncollectable, it is bad debt expense. However, in addition, Mobex other major gross revenues attributed to MCLM from other known sources (apart from ones that Petitioners do not know of). (ii) Mobex sold off its 800 MHz (and possibly other) non-AMTS FCC licenses to Nextel (and possibly others) prior to Auction 61, and some of that sale income, and

It is not questioned by MCLM or the FCC that any predecessor in interest of MCLM is its affiliate for Auction No. 61 purposes, as meant in relevant FCC rules.[34]

See Exhibit 1 to the Jackson Reply: This was a statement by MCLM, via its legal counsel, to the FCC in the overarching proceeding regarding the AMTS licenses obtained by misrepresentations and other legal violations of MCLM in Auction 61, some of which spectrum is subject of this Petition and this Application. In Exhibit 1, MCLM persists in flatly denying this inescapable fact: that Mobex is its predecessor in interest, that MCLM lied about this to the FCC, and to day continues to attempt to hoodwink the FCC staff into believing it should reverse its finding noted above, and overlook the fact and MCLM's own statements that Mobex is its predecessor in interest, and it is Mobex's successor in interest. It attempts that now by suggesting that it only acquired the assets of Mobex and that only a take over of a business entity creates this relation (predecessor and successor in interest). First, the evidence submitted in the Petition shows MCLM took over both the assets and business of Mobex, but even if it only took over the as-

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interest thereupon, was in the three years preceding the year of Auction 61: one Mobex company (that held AMTS licenses) was not dissolved until after Auction 61, and some other Mobex companies have to this day not been dissolved. (iii) MCLM asserted a claim right to revenue via a refund it demanded, on behalf of Mobex, before the Universal Service Fund Administrator ("USFA"). It asserted that only since it purchased that right from Mobex, with its other assets and business. That claim then became an asset of Mobex which, by presenting to the USFA, it sought to profit from. Whether or not it succeeded, it alleged the legal right to this revenue and the revenue. (iv) Other: see evidence in the Petition, including referenced, incorporated, and attached materials.

[34] Section 1.2110 (o) provides, in relevant part:

> (o) Gross revenues. Gross revenues shall mean all income received by an entity, whether earned or passive, before any deductions are made for costs of doing business (e.g., cost of goods sold), as evidenced by audited financial statements for the relevant number of most recently completed calendar years or, if audited financial statements were not prepared on a calendar-year basis, for the most recently completed fiscal years preceding the filing of the applicant's short-form (FCC Form 175). If an entity was not in existence for all or part of the relevant period, gross revenues shall be evidenced by the audited financial statements of the entity's predecessor-in-interest or, if there is no identifiable predecessor-in-interest, unaudited financial statements certified by the applicant as accurate.

sets—the FCC licenses and licensed stations, and associated assets, that still unquestionably creates this predecessor and successor in interest relation.

The FCC rules on affiliates makes entirely and repeatedly clear that it defines affiliates as entities with certain economic interests related to the auction applicant, that may provide to the applicant direct or indirect financial support that the FCC chooses to consider in its designated-entity bidding-discount-level "size." Predecessors in interest of an applicant are included since they may have assets that produce income: Income is not produced by private for profit entities by taxation, as government entities can obtain, or by charitable donations as tax-exempt nonprofits can obtain, but since they have assets that support business that generates or may generate revenue. The FCC does not, with many terms it uses that have well-established legal and industry meaning, define said terms. In this case, the above noted purpose, made clear in its designated-entity rules on affiliates, is fully served by the standard industry definition of successor in interest (and the mirror definition of predecessor in interest) as shown below (emphasis and text in brackets added in the below definitions):

(1) Sources 1 and 2: From: Lawyers.com, citing Merriam-Webster:

> Successor in interest
>
> Definition
> : a successor to another's interest in property [assets]
> esp: a successor in ownership of a business that is carried on and controlled substantially as it was before the transfer

The above states that it is:

> Based on Merriam-Webster's Dictionary of Law ©2001.
> Merriam-Webster, Incorporated
> Published under license with Merriam-Webster, Incorporated.
> http://www.m-w.com

(3) Source 3: The Complete Real Estate Encyclopedia by Denise L. Evans, JD & O. William Evans, JD. Copyright © 2007 by The McGraw-Hill Companies, Inc.

> successor in interest [means]

> An owner of property [assets] after the one being described.
>
> Example: Jim executed a mortgage on property that was never paid off, but which never showed up in title searches until recently, despite the fact the property had been sold several times. All of Jim's successors in interest were in danger of losing their property to a foreclosure by the mortgage holder.

(4) Source 4: Answers.com

> What does successor in interest mean?
>
> A successor in interest is one who follows another in ownership or control of a property. For example: If you sold your home the new owner would be your successor in interest.

MCLM itself has repeatedly stated to the FCC that it acquired the AMTS FCC license assets and associated – alleged—operating station hardware from Mobex—not to warehouse them, but to keep them in operations as CMRS business. Even if not kept in operation, this is an acquisition of assets that creates this predecessor and successor in interest relation, but, in addition and independently, this relation is created due to that alleged take over and continuation of this CMRS gross-revenue producing (alleged) business of Mobex.

Mobex attempted to get the FCC to allow it to exclude some of its revenues for purposes of auction bidding, but at least Mobex requested this and was rejected. Then, after that rejection, MCLM was formed and simply lied to the FCC that it had no affiliates including Mobex. The Mobex rejection is explained by the FCC in, or including in, FCC 02-74[35] (footnotes in original retained, and emphasis and text in brackets added):

> 81. We reject Mobex's recommendation that we should allow applicants seeking bidding credits to exclude operating revenues from activities that have been discontinued more than one year prior to the filing of the short form application when determining the average gross revenues for the preceding three years.[36] We note that a business's gross revenue stream may fluctuate over a three-year period

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[35] In the Matter of Amendment of the Commission's Rules Concerning Maritime Communications … PR Docket No. 92-257, Second MO&O and Fifth R&O, FCC 02-74, Released April 8, 2002.

[36] [Footnote in original:] Mobex Comments at 16.

> and that certain revenue-producing activities [including FCC licensed stations] may be discontinued. By averaging the total gross revenues for the preceding three years, including those revenues that come from any discontinued activity , the applicant is able to provide an accurate and equitable measure of the size of a business and whether that business has the resources to compete in an auction.[37] For that reason, the Commission has not excluded such revenue from the definition of gross revenues it has applied to applicants for licenses in other services. Moreover, we are concerned that adoption of Mobex's recommendation could invite business practices that are designed to circumvent our competitive bidding provisions in order to qualify as a small or very small business, *i.e.*, to shield revenue or shelve revenue-producing activities for the year preceding the auction [including from past sales of, or operations of, FCC licenses]. We believe our current definition of "gross revenues" has worked well to date as a measure of an applicant's size and Mobex has failed to present any evidence to the contrary.

See: In the Matter of Applications of MOBEX NETWORK SERVICES, LLC; for Automated Maritime Telecommunications System Along the Mississippi River. File Nos. 0001082495.... DA 05-2492. 20 FCC Rcd 14813; 2005 FCC LEXIS 5185. Released; September 20, 2005:

> 3. On August 11, 1982, the Commission granted Mobex's predecessor in interest, Waterway Communications System, Inc. (Watercom), the authority to construct and operate an AMTS along the Mississippi River. n8 Watercom's system was authorized to operate on AMTS Channel Block A.

The preceding makes clear that the FCC deems a company a predecessor when it buys the FCC licenses and licensed station assets of a company. MCLM's position that-- after Mobex purchased the Watercom AMTS licenses and stations, and thus Watercom became the predecessor of Mobex-- when MCLM then bought the same from Mobex, Mobex was not its predecessor in interest is, of course, nonsensical and without basis in the very history of the AMTS licenses and station assets at issue. See also Exhibit 2 to the Jackson Reply.

For this reason alone, MCLM was created and presented to the FCC as having no affiliates as a sham—to attempt to get out of the gross revenues of Mobex and its other affiliates, to get a

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[37] [Footnote in original:] Amendment of Part 1 of the Commission's Rules -- Competitive Bidding Procedures, *Third Report and Order and Second Further Notice of Proposed Rule Making*, WT Docket No. 97-82, 13 FCC Rcd 374, 388-89 ¶ 19 (1997); *see generally* 15 U.S.C. § 632(c)(2)(ii).

bidding discount it did not deserve and to unfairly compete in Auction No. 61. To this day, MCLM perpetuates this and a host of other shams shown in the Petition.

7. Past and Ongoing Violation of Section 80.385(b), FCC rules, and Anticompetitive Actions

Another new fact is that MCLM is in violation of Section 80.385(b) and the *MCLM Ruling*. Petitioners have made written demands on MCLM for its actual incumbent station operating parameters, which the FCC has declared, without any appeal by MCLM, that MCLM must provide to Petitioners (discussed above), but MCLM has refused to provide this information.[38] That is among issues Petitioners have pending in New Jersey court including under 47 USC Section 401(b). It could not be more clearly anticompetitive and against US antitrust law to withhold such information from Petitioners. Among Mobex and MCLM, they have for years and continue to conspire to violate U.S. antitrust law including by restraining and blocking Petitioners' rightful access to the AMTS spectrum they bought at auctions. See 47 USC Section 313 which provides that a court that finds a licensee has violated antitrust law will lose its license(s) and may order the FCC not to issue further licenses. That is a matter for U.S. District Court as the statute explains, not the FCC, but Petitioners point it out here as evidence of further rule violation and lack of character and fitness.

MCLM's response to Petitioners' most recent demand (the "MCLM Comment")[39] shows it will not provide station parameters contrary to the FCC's Two Orders and Section 80.385(b). Instead, the MCLM Comment suggests a rule that does not exist. In order for Petitioners to proceed with any short spacing under Section 80.385(b), MCLM asserts that Petitioners must give them their confidential and proprietary business plan and any agreements, which is not required by any FCC rule. This is further evidence that MCLM is not operating its site-based licenses. If

[38] See Attachment 009 hereto.

[39] See *Comment* filed by MCLM on May 6, 2010 under File No. 0002303355 and various other MCLM call signs, including the License. (the "Comment")

it were really operating the site-based licenses, then it would have those actual station technical parameters. Also, if MCLM were actually providing service with its site-based licenses, then the public would know those licenses' actual station technical parameters since MCLM would have publicly disclosed information about the coverage area and station parameters of its site-based licenses for its customers and potential customers to see and consider. MCLM cannot assign those licenses when it will not even report and disclose to Petitioners or the FCC those licenses' actual station parameters, including but not limited to, because as the Two Orders state each site-based license's area is not per the original hypothetical maximum application parameters as MCLM asserts, but per the actual station operating parameters, which MCLM will not provide to the FCC or Petitioners.

Based on any assumptions of what MCLM may have actually built, the MCLM stations, or most of them, automatically terminated for failure to meet the overlapping site coverage requirement of Section 80.475(a) that, as the Two Orders noted, was in effect at the construction deadline for MCLM's site-based AMTS licenses. This is yet another reason that the Application cannot be processed because MCLM has maintained for year auto-terminated licenses which shows lack of character and fitness and long-term, ongoing rule violations and that they refuse to comply with the requirements of Section 80.385(b) and thus are admittedly violating FCC rules. In addition, Petitioners are submitting various information to the FCC in relation to the FCC's ongoing investigation that shows that the MCLM incumbent stations have auto-terminated without specific Commission action and are otherwise invalid.

8. Hearing Required On Some Issues,
But Petition Grant Under Admitted Facts and Clear Rules Required

Petitioners refer to Exhibit 6 of their 7/9/08 Supplement filed under File No. 0002303355. That Exhibit 6 contains an article on the 5th Amendment to the Constitution. The 5th Amendment requires a hearing, according to US Supreme Court, in administrative proceedings, at least

at some stage in the proceeding. In accord, 47 USC 309 requires a formal hearing it if a petition to deny presents the called-for *prima facie* evidence. The Administrative Procedure Act also requires it. The facts presented above, especially combined with facts in the Related Proceedings, are compellingly sufficient for said hearing.

However, the facts presented here, especially combined with facts in the herein referenced and incorporated pleadings clearly demonstrate that MCLM lacks character and fitness to be a Commission licensee for repeated, deliberate misrepresentations and fraud, and thus it licenses should be revoked and the Applications dismissed or denied.

9. *Ashbacker* Rights

As shown herein, ENL and ITL of Petitioners have *Ashbacker* rights to the spectrum subject of the License and they are making clear here that they have pending challenges to the License and that if successful at the Commission or Court, then one of Petitioners would be entitled to the spectrum of the License since MCLM should be disqualified and the License revoked for the reasons given herein. In this regard as to Petitioners rights to MCLM AMTS licenses, as previously agued to the FCC (with such arguments pending on appeal): ENL and ITL effectively submitted a competing application for MCLM's Auction No. 61 licenses, including the License, and between ENL and ITL they were the high qualified bidders for all the AMTS licenses awarded to MCLM in Auction 61 if the clear applicable rules on qualification / disqualification are applied based on the admitted and otherwise proven facts (also with respect to MCLM's incumbent AMTS licenses, those auto-terminated as discussed herein and have reverted to the geographic licensees, who are among Petitioners). Thus, they have rights under the well know US Supreme Court case, *Ashbacker,* pertaining to competition for FCC license applications.

10. FOIA Requests

SSF has a FOIA request (FOIA Control No. 2009-089) regarding MCLM's and Mobex's Form 499-A filings that is on court appeal to the US District Court for the District of Columbia

for the FCC to provide unredacted 19 pages of documents and other documents requested. SSF and the other of Petitioners reserve the right to amend and supplement this Petition without grant of special leave for a period of time after the court orders the FCC to or the FCC on its own motion releases the withheld and redacted records since those records will be relevant to the Application, License and MCLM's character and fitness.

SSF also has a FOIA request on appeal (FOIA Control No. 2010- 379) to obtain all records filed by MCLM and its affiliates in response to the WTB and Enforcement Bureau letters since the copies of the responses that Petitioners were provided by MCLM and its affiliates were heavily redacted and withheld a majority of the information submitted to the FCC (e.g. MCLM and WPV withheld all exhibits filed with their responses, which contained the principle documents responsive to the Enforcement Bureau's investigation, and MariTel also withheld exhibits and financials).

The FCC has denied SSF's FOIA request 2010-379 to date and refused to provide the documents and other information that it received from MCLM, WPV and Maritel and both DePriests in response to the WTB's and Enforcement Bureau's letters of inquiry and investigation of MCLM. That information is directly relevant to the FCC's investigation of MCLM and its Forms 175 and 601 applications for Auction No. 61, which Petitioners are challenging. Thus, that information is directly relevant to Petitioners' Section 309 petition to deny in that proceeding and must be provided to them since the FCC has determined that those records are of decisional significance for it to decide on the MCLM Auction No. 61 application (File No. 0002303355). Obviously, the intentionally withheld information, as stated above, contains relevant facts and information that will have an effect on the Application, including relating to MCLM's actual ownership and control, its affiliates, revenues and its bidder size (qualification for the License originally and also for other purposes of the Application, etc.). Petitioners have pending before various state agencies FOIA requests involving contracts and documents to and

from MCLM and SCRRA and other entities that may further demonstrate who Sandra DePriest authorizes to take officer action for MCLM. Petitioners' reserve the right to supplement this proceeding with any relevant new facts they may receive from those SSF FOIA requests and other FOIA matters.

SSF is appealing the FCC's denial of its FOIA request 2010-379.[40] In its FOIA Appeal, SSF shows that the FCC failed to comply with the FOIA requirements and standards and that it improperly denied its request. SSF fully expects to win on its FOIA Appeal and to obtain the impermissibly withheld records. SSF and its affiliates reserve the right to amend and supplement this Petition without grant of special leave for a period of time after the FCC releases the records sought to use those records and any new relevant facts they contain since SSF and all other of Petitioners clearly had a right to those records as explained in the FOIA Appeal. This is relevant to this proceeding since Petitioners' challenges to the MCLM Auction 61 Form 601 include challenges to MCLM's character and fitness to hold all licenses, including its AMTS site-based and geographic licenses, and other challenges applicable to the subject License. SSF and the other of Petitioners also intend to supplement their other pending proceedings against MCLM with those records once obtained.

11. MCLM Offering all its AMTS Spectrum for Sale Now

It should be noted now that MCLM has its entire AMTS spectrum listed for sale with Spectrum Bridge, Inc. (see www.**spectrum**bridge.com/pdf/**Spectrum**Bridge_**MCLM**-Release.pdf). First MCLM asserted in its application to acquire the Mobex site-based AMTS that it was a new operator that would continue AMTS service, and in acquiring AMTS in Auction No. 61 (by violating many FCC rules, as Petitioners have demonstrated in pending FCC

[40] *Application for Review of Freedom of Information Act Request*, FOIA Control No. 2010-379, filed by Skybridge Spectrum Foundation on July 2, 2010 with the FCC's Office of General Counsel. (the "FOIA Appeal"). See http://www.scribd.com/doc/34293918/FCC-FOIA-Denial-MCLM-Depriests-Investigation-Appeal-to-FCC-Office-General-Counsel-With-10-Attachments

proceedings) MCLM further asserted that they were a bona fide operator of AMTS services. However, with no evidence in the public record at all of any actions by MCLM to operate the site-based stations acquired from their predecessors-in-interest or spectrum obtained in Auction No. 61, MCLM has instead listed all of the spectrum for sale. The sale is through an operation, Spectrum Bridge, that suggests that a buyer can sign up online and secure spectrum, like a new invention. However, that process cannot avoid FCC rules and procedures for spectrum assignments. Apart from that inconsistency, that listing of all its AMTS spectrum for sale suggests the reason behind its request for refund in the WCB Proceedings. It simply wants to get out of the AMTS business, which according to public records it never operated in the first place (see e.g. failure to pay USF fees for all states it operates in per its Forms 499-A, lack of State business registration and tax filings, etc. noted in Auction No. 61 Proceedings, other of the Related Proceedings and Attachment 010 hereto which contains Spectrum Bridge's own statements that the Mobex and Watercom incumbent stations purchased by MCLM had "ceased operations" and are "dormant")), and recoup as much money as it can.[41]

12. Sanctions Against MCLM-Mobex Counsel

MCLM-Mobex counsel, Dennis Brown, clearly should be sanctioned in light of the record since there is no way that he could not have been unaware of the facts regarding MCLM's and Mobex's history of violations presented herein and since he has a history of this, e.g. http://www.scribd.com/doc/23192936/FCC-Communications-Act-Sec-308-Decision-Licensee-Kay-Attorney-Dennis-Brown-Lack-Candor-License-Revocation-Fines).

[41] Any actual AMTS operator, with the quantity of spectrum that it has asserted for years to the FCC is in legitimate operation would have resulted in a greater income than it reported to the USAC. This evidence is further indication that MCLM has not been operating CMRS AMTS stations as it has represented to the FCC for years and is further evidence of it warehousing spectrum, both of which are sufficient cause for a hearing and ultimately revocation of its licenses for failure to operate as CMRS according to the FCC's rules and for lacking candor and misrepresenting to the FCC its actual operations and intent.

13. Other: Violation of Criminal Code, Unjust Enrichment, and Laundering

Enbridge and its Agents Are Potentially Liable with MCLM for Violations of 18 United States Code

The fraud and other violations of law by the owners of MCLM assets are not merely violations of FCC law, but also of US criminal code, including 18 USC Sec. 1001, and extend to MCLM's attorney, and those who aid, abet, and benefit in these actions, including those in Enbridge whose actions are implicated. Applicable related code sections also make it a crime for officers and agent of the United States (and thus FCC staff) to participate in such fraud and violations. Applicable statutes include 18 USC Sections 1001, 2, 3, 4 and 18. [42] State laws for similar purposes are also involved.

> 18 USC Section 1001. Statements or entries generally.
> (a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully—
> (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
> (2) makes any materially false, fictitious, or fraudulent statement or representation; or
> (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;
> shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism ….
>
> 18 USC Section 1002. Possession of false papers to defraud United States.
> Whoever, knowingly and with intent to defraud the United States, or any agency thereof, possesses any false, altered, forged, or counterfeited writing or document for the purpose of enabling another to obtain from the United States, or from any agency, officer or agent thereof, any sum of money, shall be fined under this title or imprisoned not more than five years, or both
>
> 18 USC Section 2. Principals.
> (a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

[42] Other violations of law in the actions of MCLM, Enbridge and others that are apparent in the matters of and relating to the Application but that are outside of FCC and US criminal law will be pursued in other forums with jurisdiction.

(b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

18 USC Section 3. Accessory after the fact.
Whoever, knowing that an offense against the United States has been committed, receives, relieves, comforts or assists the offender in order to hinder or prevent his apprehension, trial or punishment, is an accessory after the fact.
Except as otherwise expressly provided by any Act of Congress, an accessory after the fact shall be imprisoned not more than one-half the maximum term of imprisonment or (notwithstanding section 3571) fined not more than one-half the maximum fine prescribed for the punishment of the principal, or both; or if the principal is punishable by life imprisonment or death, the accessory shall be imprisoned not more than 15 years.

18 USC Section 4. Misprision of felony.
Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined under this title or imprisoned not more than three years, or both.

18 USC Section 1018. Official certificates or writings.
Whoever, being a *public officer* or other person authorized by any law of the United States to make or give a certificate or other writing, knowingly makes and delivers as true such a certificate or writing, containing any statement which he knows to be false, in a case where the punishment thereof is not elsewhere expressly provided by law, shall be fined under this title or imprisoned not more than one year, or both.

Unjust Enrichment

Per Petitioners' facts herein and in the pending Section 309 proceeding in Auction No. 61, MCLM did not qualify for any bidding credit in Auction No. 61 when attributing its affiliates' gross revenues. Even if one ignores the facts and that the FCC's rules, including Section 1.2105, require disqualification of MCLM for any change in bidder size and bidding credit level, the Application cannot be granted, apart from all of the other reasons given herein for its dismissal or denial, until the correct unjust enrichment amount is determined and paid. However, notably, MCLM has still not, after almost 5 years, fully disclosed all of its affiliates and their gross revenues on its Auction No. 61 application as required by FCC rules (stating or listing affiliates and

gross revenues in pleadings or in confidentially filed documents does not meet the requirements of the FCC's rules and the FCC has not waived those rules and MCLM has not asked for them to be waived). All affiliates and gross revenues are required to be listed publicly on the Forms 175 and 601. MCLM has failed to do so. Instead, it has confidentially filed gross revenue information for its affiliates with the FCC (see its response to the Enforcement Bureau in which it refuses to provide this information to Petitioners—e.g. for MCT Corp. and others). That is not permitted and the FCC should not allow it any longer or it risks harming Petitioners even more (Petitioners cannot employ their full petition rights under Section 309 if publicly required information is not disclosed to them by the FCC and MCLM). Petitioners have already been prejudiced by MCLM's actions and the FCC's inaction to require accurate and public disclosure of all of MCLM's affiliates and gross revenues on its Forms 175 and 601. More importantly, it is impossible for Petitioners or the public to effectively petition the Application without this information that is supposed to be made public. Without this information, Petitioners cannot determine per the MCLM auction application if MCLM qualified for any bidding credit at all (although per Petitioners' facts it is obvious that MCLM did not qualify for any) and thus effectively petition the Application, including, but not limited to, whether or not the correct unjust enrichment payment will be made for the Application if granted. Also, it means that the FCC cannot effectively determine this amount either (the FCC cannot keep this information private, so any calculation made on such privately kept information is defective). Therefore, the Application cannot be granted until this information is publicly released and Petitioners have time to supplement the Petition (which the FCC must accept since the FCC should have granted Petitioners' motion to extend the pleading cycle to allow Petitioners' to obtain this information and timely present it in the Petition, rather than to have to file a supplement).

Laundering, Enbridge Knowledge of Facts & Related

The Application is another attempt by MCLM to launder its License, which is defective for reasons given herein. The License is clearly defective per Petitioners' facts and arguments in the "Section 309 Proceeding" (term is defined below in Reference and Incorporation section) and given herein. This is not the first time that MCLM, including its predecessor-in-interest, has attempted to launder defective FCC licenses.

MCLM and Enbridge should not be able to launder the License of its defects shown in the Section 309 Proceeding or MCLM to gain benefit from the License in light of the clear evidence of fraud and misrepresentations in the Section 309 Proceeding that require its disqualification and revocation of the License. Enbridge should not be supporting MCLM in its laundering efforts for the License, especially considering that Enbridge has to have done substantial due diligence and be familiar with the facts in the Section 309 Proceeding, the Section 308 Proceeding and the current Enforcement Bureau investigation. Thus, the Application should be dismissed or at minimum held in abeyance until the Section 309 Proceeding is finalized by the FCC or court.

It is impossible to believe that Enbridge, represented by competent legal counsel, is not aware of the pending Section 308 and 309 Proceedings and other pending proceedings against the MCLM Licenses described herein (the facts under investigation in the Section 308 proceeding stem from the Section 309 proceeding) including since it is in contract with MCLM and must have various representations, warranties, and information that directly or indirectly provide information sought in said proceeding. Indeed, the Enforcement Bureau decision to launch its formal investigation is an effective grant of Petitioners' petition to deny the MCLM Form 601 from Auction No. 61, which means there exist sufficient facts as to the subject MCLM License having been contrary to law, not in the public interest, and thus subject to proper revocation. Selling and buying "hot bikes" (stolen goods) is not a legitimate trade or business, as MCLM is engaging in and Enbridge and its counselors seek to profit from: Petitioners have submitted

hundreds of pages of documentary evidence to the FCC of this (principally in their challenge to MCLM in Auction 61 and further herein): it is a sound analogy.

The Assignee did not, however, seek in relation to its application for assignment in this case, any waiver of the legal process involved or the defects in spectrum involved. Rather, it is participating in an attempt to aid and abet MCLM in unlawful licensing and unjust enrichment, and that is also anti-competitive and against US antitrust law. See 47 USC Section 313 in that regard. Petitioners have a case in US District Court against MCLM for said antitrust law violation in various ways. If any FCC licensee is found to have violated said antitrust law, then the court shall order the FCC to revoke its FCC license and bar further ones.

As Petitioners also noted in their comments in that Section 308 Proceeding, they have court cases pending against MCLM and Mobex Network Services LLC ("Mobex")-- (MCLM's predecessor in interest that made millions of dollars in gross revenues, per its statements to the USFA- *but not an affiliate MCLM admitted to in Auction 61, even to this day*)-- and "Does One to One Hundred." Those Does include parties conspiring with MCLM to launder AMTS spectrum to which Petitioners have a rightful claim. That includes Enbridge who must be aware of the false and criminal claims of MCLM to said AMTS spectrum since any due diligence by Enbridge for the License would have included review of the pending Auction No. 61 Proceedings and Petitioners' petitions and appeals in those and other proceedings against MCLM and the License, all of which are publicly available on ULS and noted in various FCC Orders. For various reasons, including since the FCC hardly ever holds any hearings under Section 309 of the Communications Act even where the evidence in a Section 309(d) petition to deny clearly warrants it, and since the Act provides savings clauses for anti-trust and tort actions, as well as private rights of action under Sections 206, 207, and 401(b) Petitioners sued MCLM, Mobex, and Does, and that is relevant to the FCC since the facts to be obtained in discovery and certain deci-

sions sought must be considered by the FCC in licensing actions, including as to the subject Application.[43]

While before the courts (see preceding footnote), MCLM asserts it cannot be held in any way accountable, and that only the FCC can hold any hearing as to anything dealing with a FCC license or licensee, before the FCC, the *sine qua non* of MCLM is to not only to evade even basic required disclosures, but to provide conflicting and false information to get, warehouse and sell off spectrum and in the mean time block and damage lawful competition. Enbridge seeks to buy into and benefit from that—and to hurry it up.[44]

For these and other reasons explained in this Petition, the FCC should add Enbridge to the Section 308 Proceeding and Enforcement Proceeding and request any and all information it has regarding MCLM and any agreements it has with MCLM, including who negotiated the sale for MCLM and what it was told about the roles of Donald DePriest, John Reardon and others in MCLM.

14. Conclusion

For the reasons given, the relief requested herein should be granted, including but not limited to denial or dismissal of the Application and revocation of the License. At minimum, a hearing under Section 309 (d) and (e) must be held. To be clear, Petitioners object to, and tend to litigate, the FCC proceeding with this Application and any MCLM licensing actions in any form, for reasons stated above, including that the FCC has created a bogus background proceed-

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[43] MCLM argued to the courts that it cannot be touched in the court as to any fraud, tort, anti-trust violation, contract interference, etc. since only the FCC may deal with issues that touch upon a FCC license or licensee. That sort of entire or filed preemption is not what Congress meant under Section 332 of the Communications Act.

[44] As Sandra Depriest suggested to the FCC upon Petitioners' initial comments on her and her husband's responses to the Section 308 letters: hurry up before the Petitioners find and present more evidence against them, and also excuse their admitted violations and further lack of disclosures, contradictions, and nonsensical explanations as to when a "manager" is not really manager, and an "officer" is not really an officer, and so forth. They got away with that for a few decades.

ing that lead to the unlawful grant and to date maintenance of the MCLM licenses including the one subject of the Application, the unlawful and deliberate denial of Petitioners' most basic petition rights and in this case, rights to a formal hearing, and since MCLM has demonstrated clearly to the FCC that is it a sham corporation. Nothing could be more distant proper action by a federal agency charged with acting to guide, protect, and administer the public interest, convenience and necessity, and to create a law-based equitable level playing field in which healthy competition can take place. Petitioners have been warned (with threats of adverse action) by both FCC staff and certain professional advisors who know the FCC from the inside, to not challenge the FCC's undefined almost limitless discretion in the Communications Act, but in the circumstances, that is not a proper course Petitioners as corporate citizens and licensees.

Petitioners' actions in wireless in the public interest are in part reflected in the first Appendix hereto.

Respectfully,

Environmentel LLC (formerly known as AMTS Consortium LLC), by

[Filed electronically. Signature on file.]
Warren Havens
President

Verde Systems LLC (formerly known as Telesaurus VPC LLC), by

[Filed electronically. Signature on file.]
Warren Havens
President

Intelligent Transportation & Monitoring Wireless LLC, by

[Filed electronically. Signature on file.]
Warren Havens
President

Telesaurus Holdings GB LLC, by

[Filed electronically. Signature on file.]
Warren Havens
President

Skybridge Spectrum Foundation, by

[Filed electronically. Signature on file.]
Warren Havens
President

Warren Havens, an Individual

[Filed electronically. Signature on file.]
Warren Havens

Each of Petitioners:

2509 Stuart Street (principle office)
Berkeley, CA 94705

2649 Benvenue Ave. (second office)
Berkeley, CA 94704

Ph: 510-841-2220
Fx: 510-740-3412

Date: December 8, 2010

Exhibits and Attachments

All Exhibits and Attachments are being filed separately from the text of the Petition on ULS. This is being done in part due to file size limitations of ULS.

Declaration

I, Warren Havens, as President of Petitioners, hereby declare under penalty of perjury that the foregoing Petition to Deny, or in the Alternative Section 1.41 Request, including all attachments and exhibits—including the following: the MCT Corp. private placement memorandum in Attachment 002 that was obtained from Peter Harmer of Nashville, TN who held interest in MCT Corp. for a period of time and who recently publicly submitted the same document in the public case filed by Donald DePriest against Mr. Harmer in the U.S. District Court, State of Mississippi, Northern District, in response to Mr. DePriest publicly raising issues against Mr. Harmer regarding his interest in MCT Corp. under that document, was prepared pursuant to my direction and control and that all the factual statements and representations contained herein are true and correct.

/s/ Warren Havens
[Submitted Electronically. Signature on File.]

Warren Havens

December 8, 2010

Certificate of Service

I, Warren C. Havens, certify that I have, on this 8th day of December 2010, caused to be served, by placing into the USPS mail system with first-class postage affixed, unless otherwise noted, a copy of the foregoing Petition to Deny, or in the Alternative Section 1.41 Request, including all exhibits and attachments, unless otherwise noted,[45] to the following:[46]

Jeff Tobias, Mobility Divison, WTB
Federal Communications Commission
Via email to: jeff.tobias@fcc.gov
(The Petition's text only)

Lloyd Coward, WTB
Federal Communications Commission
Via email to: Lloyd.coward@fcc.gov
(The Petition's text only)

Hillary S. DeNigro, Chief
Investigations & Hearings Division
Enforcement Bureau
Federal Communications Commission
Via email to: Hillary.denigro@fcc.gov
(The Petition's text only)

Gary Schonman, Special Counsel
Investigations and Hearings Division
Enforcement Bureau
Federal Communications Commission
Via email to: gary.schonman@fcc.gov
(The Petition's text only)

Brian Carter
Investigations and Hearings Division
Enforcement Bureau
Federal Communications Commission
Via email to: brian.carter@fcc.gov
(The Petition's text only)

Dennis Brown (legal counsel for MCLM and Mobex)
8124 Cooke Court, Suite 201
Manassas, VA 20109-7406

[45] Petitioners are serving a copy of the Petition's text only, excluding exhibits and attachments, to certain of the parties as noted on this Certificate of Service. A copy of the exhibits and attachments can be downloaded electronically from ULS.

[46] The mailed copy being placed into a USPS drop-box today may not be processed by the USPS until the next business day.

Enbridge Energy Company, Inc.
ATTN Telecom
1001 G Street NW, Suite 500 West
Washington, DC 20001

Keller and Heckman LLP (Legal counsel for DCP Midstream—same firm as for Enbridge, and for NRTC)
Jack Richards , Esq
ATTN Elizabeth Buckley
1001 G Street, NW, Suite 500 West
Washington, DC 20001

DCP Midstream LP
ATTN Telecommunications Department
6175 Highland Avenue
Beaumont, TX 77705
(The Petition's text only)

Fletcher Heald & Hildreth (Legal counsel to Southern California Regional Rail Authority)
Paul J Feldman
1300 N. 17th St. 11th Fl.
Arlington, VA 22209
(The Petition's text only)

Southern California Regional Rail Authority
ATTN Darrell Maxey
700 S. Flower St. Suite 2600
Los Angeles, CA 90017
(The Petition's text only)

Russell Fox (legal counsel for MariTel, Inc.)
Mintz Levin
701 Pennsylvania Ave., N.W.
Washington, D.C. 20004
(The Petition's text only)

Jason Smith
MariTel, Inc.
4635 Church Rd., Suite 100
Cumming, GA 30028
(The Petition's text only)

Joseph D. Hersey, Jr.
U.S. National Committee Technical Advisor and,
Technical Advisory Group Administrator
United States Coast Guard
Commandant (CG-622)
Spectrum Management Division
2100 2nd Street, S.W.

Washington, DC 20593-0001
Via email only to: joe.hersey@uscg.mil
(The Petition's text only)

/s/ [Filed Electronically. Signature on File]

Warren Havens